

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**





7.6

362

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ROBERT A. SCHMITZ )

Appellant )

v. )

SOCIETE INTERNATIONALE, etc. )

Appellee )

United States Court of Appeals  
for the District of Columbia Circuit

No. 241800  
FILED FEB 29 1972

Nathan J. Panken  
CLERK

MOTION FOR RECONSIDERATION BY THE  
COURT OR, ALTERNATIVELY, FOR RE-  
HEARING BY THE COURT, EN BANC

Appellant hereby moves for reconsideration by the Court or, alternatively, suggests rehearing by the Court en banc, of his appeal decided without opinion by a brief per curiam order of a panel of this Court on February 15, 1972. Notice of this decision was first given to appellant's counsel by mailing him a copy of the Order. It was received on February 17. The case had been argued on January 20, 1972. The basis for this petition is that inadequate consideration was given to the case and that in any event the decision of the District Court which was simply affirmed by this Court, was contrary to the law as established by the Supreme Court and elsewhere followed by this Court.

I

THE PANEL FAILED TO GIVE ADEQUATE  
CONSIDERATION TO THE SPECIAL CIRCUM-  
STANCES OF THIS CASE

Consideration of the entire record demonstrates that, contrary to the finding of the District Court, promises for compensation of appellant had been made by the appellee. Appellant's briefs point out numerous admissions of, and more subtle indicia of, such promises, and submitted that the total effect of the record established that there was a firm agreement for compensation upon the recovery of the appellee's property.

The Record on Appeal consists of 1745 pages of testimony adduced over a period of 13 trial days. There were 304 exhibits tendered consisting of more than 600 pages. The record reflects a course of intensive dealings between the parties for a period of three years, with frequent meetings, transatlantic telephone calls and cables and a voluminous correspondence. Yet the District Court said that it could find no express promise to compensate appellant. It did, however, find that there was an implied promise to compensate but nevertheless denied recovery on the ground that there was no specific proof of the value of these services.

The panel of this Court says, after the case has been under submission for twenty-five days, that it agrees with the lower court's decision. Its brief Order does not even say that a consideration of the entire record supports

the findings of the District Court. Yet under such cases as Commissioner v. Duberstein, 363 U.S. 278 (1960) and United States v. U.S. Gypsum Co., 333 U.S. 364 (1948), interpreting Rule 52(a) of the Federal Rules of Civil Procedure, the Supreme Court has decided that such is the duty of the Court of Appeals. If the Court of Appeals determines that the record as a whole does not support the findings of the District Court it must reverse, and only if the same consideration supports the findings may the lower court be affirmed. Moreover, there is no indication from the Court's brief order that the appeal from the trial court's finding denying leave to present additional evidence has been considered.

It seems inappropriate for the Court here to have held that it agreed with the lower court where not only has the appellant pointed out the numerous inconsistencies between the findings and the record, but the appellee also disagrees with the trial court. Rather than relying on the findings of the court as correct, appellee, in its brief, thought it necessary to devote approximately 22 pages to its version of the facts (presumably based on the record) which is at almost complete variance with the Court's findings. Can counsel for both parties be so mistaken as to the significance of the record that they are both wrong and only the trial judge is entirely right? Possibly; but where such a situation exists and where so much is involved, it is submitted that this Court in justice to the parties should scrutinize the entire record most carefully rather than to conclude that the issues are too insignificant even to justify an opinion.



The entire Court is therefore requested to give this case the adequate consideration that its importance and its full and careful presentation demands.

## II

### DAMAGES

#### A. The District Court Found as a Fact that Plaintiff Rendered Valuable Services for Which he Was Entitled to Compensation

The District Court found as a fact that plaintiff rendered valuable services to the Swiss in a case involving a huge industrial property ultimately valued on the open market at approximately \$340,000,000.00, (J.A. 109) which became an international controversy and which involved the World Court and the Federal Courts of the United States for nearly 18 years. The precise ruling of the trial court is as follows:

" It is certainly reasonable for the court to find that the facts of this case entitle plaintiff to relief on either theory. On either theory, plaintiff has shown that he is entitled to reasonable compensation for his services.:

(J.A. 48)

It is to be noted that the District Court did not limit or qualify in any way its determination that plaintiff was entitled to reasonable compensation. Indeed, the record establishes the magnitude of the time and effort which plaintiff expended on behalf of the defendant, the dire need of the Swiss for plaintiff's services, the zeal with which they importuned his assistance, and their encouragement of him to work for them. Plaintiff's knowledge of the

G.A.F. controversy, derived from long years of association with the principals of Interhandel and his many years of service in common cause with defendant and various American corporations who were interested in acquiring defendant's stock in G.A.F., obviously had a great value to the Swiss. Indeed, the trial court found as a fact that he was well versed in all phases of the G.A.F. matter. (J.A. 40) But over and above that, plaintiff's concept of the trusteeship idea, his success in persuading the great American, Charles E. Wilson, to accept this arduous task and to stand for the Swiss with a priceless new image for no monetary compensation, and the merits of the Wilson trusteeship as an honest, aboveboard, appropriate means of resolving in a fair and equitable manner an international "can of worms" is of even greater merit. Defendant realized the worth of the trusteeship when it solemnly and irrevocably gave Charles E. Wilson sole unlimited authority to negotiate and settle the G.A.F. controversy, (J.A. 468, 623-24, 1045, 1267, X-97, X-104, X-108-9) and when it expressly authorized Mr. Wilson in April, 1960, to expend \$20,000,000 - \$30,000,000 out of the proceeds as he saw fit to satisfy all liens and claims against the fund. (J.A. 258, 734-35) The Zurich Bourse recognized the merits of the trusteeship when investors caused the value of Interhandel stock to appreciate by \$55,000,000 upon public disclosure of Mr. Wilson's acceptance of the trusteeship and to retain that value throughout the term of the trusteeship. (J.A. 1201-06) The United States government

welcomed this idea of the trusteeship and negotiations with the trustee showed substantial progress (J.A. 821, 1291, 1339-40, 1344, 1355) until subverted by defendant.

B. Difficulty in Computing Plaintiff's Damages is Not a Bar to Recovery Because that Difficulty was Caused by Defendant's Conduct

Both in the District Court and in argument before the panel of this Court, plaintiff has contended that he is not required to prove his damages with mathematical certainty, but rather that his burden is only to adduce evidence to show the extent of his entitlement "as a matter of just and reasonable inference". Story Parchment Co. v. Patterson Parchment Paper Co., 282 U.S. 555, 563 (1931). Plaintiff has been forced to take this position because the great difficulty in proof of damages in this case has been caused by the defendant's wrongful conduct in breaching its solemn promises to the trustee and to plaintiff. Defendant had given assurances in writing to the trustee, the plaintiff and the United States government (J.A. 468, X-104, X-108-9) that it had conveyed full power and sole authority to the trustee to act on its behalf in the effort to effect an overall equitable resolution of the controversy. The precise authority is set forth in the Power of Attorney tendered to Mr. Wilson and, in part, reads as follows:

"Interhandel hereby irrevocably vests its said Attorney in Fact with all the powers aforesaid, and renounces all right to revoke any of said Powers of Attorney or to appoint any other person to execute the same, or personally to perform



any of the acts which its said Attorney in Fact is hereby authorized to perform, and it shall remain in full force and effect until such time as said Attorney in Fact shall have executed all the powers aforesaid required to be exercised by him to consummate and conclude all negotiations and affairs related to or connected with the disposition of all the property, assets, rights, affairs and business of Interhandel as aforesaid, ..."

Relying on these promises the trustee undertook to act for Interhandel, plaintiff continued to work for the Swiss in the expectation that he was assured of compensation out of the proceeds of the anticipated settlement as a lienor on that fund, and the United States government entered into meaningful negotiations looking toward settlement of all aspects of the G.A.F. controversy.

Defendant's frustration of the negotiations between the trustee and the United States government in violation of its written assurances to the trustee and the plaintiff destroyed the trustee concept which plaintiff had conceived and implemented and which had been universally accepted and applauded. Dr. Schaefer's employment of Prince Radziwill to arrange a meeting for him with the Attorney General and his usurpation of the exclusive settlement authority previously given to the trustee, converted the basis for plaintiff's claim from a settlement actually obtained by the trustee into one to which he was neither privy nor by which he was protected. By undermining the negotiations between the trustee and the government defendant prevented plaintiff from obtaining the knowledge that would have established the proximate connection of plaintiff's endeavors to the ultimate settlement.

The authorities are unanimous that a defendant whose wrongful conduct has rendered difficult the ascertainment of the precise damages suffered by the plaintiff is not entitled to complain that these damages cannot be measured with the same exactness and precision as would otherwise be possible. In Bigelow v. R K O Radio Pictures, Inc., 327 U.S. 251, at 264-65 (1946), the Supreme Court declared:

"[T]he jury may make a just and reasonable estimate of the damage based on relevant data, and render its verdict accordingly. In such circumstances "juries are allowed to act on probable and inferential as well as upon direct and positive proof." [citing cases] Any other rule would enable the wrongdoer to profit by his wrongdoing at the expense of his victim. It would be an inducement to make wrongdoing so effective and complete in every case as to preclude any recovery, by rendering the measure of damages uncertain. Failure to apply it would mean that the more grievous the wrong done, the less likelihood there would be of a recovery.

" The most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created...."

See Hartley & Parker, Inc. v. Florida Beverage Comm., 307 F.2d 916 (5th Cir. 1962); Stepovich v. Kupoff, 261 F.2d 693 (9th Cir. 1958). The principle also finds expression in the following statement by Judge Vann speaking for the Court in Mooney v. Byrne, 163 N.Y. 86, 57 N.E. 163, 165 (1900):

" Guided by the cardinal principle that the wrongdoer shall make nothing from his wrong, equity so moulds and applies its plastic remedies as to force from him the most complete restitution which his wrongful act will permit. "



C. At the Very Least, this Court Should Remand the Case to the District Court With Instructions to Reopen the Judgment to Take Additional Testimony

The District Court's determination that plaintiff had rendered valuable services to defendant and was entitled to compensation should prompt this Court to remand this case to the District Court with instructions to reopen the Judgment to take additional testimony. In the context of this case, where plaintiff's fidelity to the Swiss cause (J.A. 324-25, 710, 746) contrasts with the defendant's disloyal treatment of the plaintiff, the trustee and the United States government, the summary affirmance of the District Court's judgment serves only to condone defendant's improper conduct and to encourage future interferences designed to complicate or preclude ascertainment of damages. Defendant's breach of its obligations to its trustee, its representation to the United States government that its trustee had resigned (J.A. 473, 500) when in fact he had not (J.A. 756; X-317, X-319, X-320) and its direct intervention in on-going negotiations by a secret emissary to the Attorney General (J.A. 1119, 1292, 1295, 1340-42, 1357-58) were all wrongful acts which combined to preclude the plaintiff from being able to prove the value of his services.

That plaintiff's services had a substantial value is shown by the affidavit of Charles E. Wilson dated June 4, 1970 which was filed as an attachment to plaintiff's motion to reopen the judgment to take additional testimony. Mr. Wilson's affidavit states, in part, that:

"The fixation of fees, including the fee of Mr. Robert A. Schmitz, was in my sole discretion under my Powers in Trust. Ever since that point in time it has been and remains my firm judgment that the reasonable value of the said services of Mr. Robert A. Schmitz was not less than five percent (5%) of the sums received by Interhandel under the settlement, and I would have paid Mr. Schmitz not less than five percent out of the sums recovered as part of my obligation. . ."

To turn away the plaintiff and deny him compensation, or at least the opportunity to present additional testimony bearing on the value of his services to defendant is to perpetrate an injustice. This case was not one involving breach of the usual commercial contract wherein proof of damages requires reference to the market value at a given time of certain goods or services. That the District Court so considered this case is revealed by the authorities which it cited in its opinion and none of which are cited in appellee's brief. Nor does this case resemble Souza v. Corvick, \_\_\_\_\_ U.S. App. D.C. \_\_\_\_\_, \_\_\_\_\_ F.2d \_\_\_\_\_ (1970) upon which defendant places principal reliance. This case is one in which the services rendered partook features of several types of services but for which there is no direct parallel. Evidence from which to "infer a just and reasonable value" is not easy to obtain and is expensive. Plaintiff should not be expected in a motion under Rule 59(a) of the Fed. R. Civ. P. to reopen the judgment to make the formal tender of proof which appellee suggests plaintiff should make. The Rule does not expressly require such and this Court should not imply such a tender.

Plaintiff urges the Court to reconsider and to reevaluate his claim in the light of the trial court's finding that he was entitled to compensation and in the context of this case which shows the injustice of this Court's summary affirmance of the judgment for defendant. It is respectfully submitted that a case should end only when justice is served. In the present posture of this case, the defendant stands unjustly enriched, and a United States citizen is being denied his earned compensation through no fault of his own.

III

CONCLUSION


The division of this Court issuing the summary affirmance should Reconsider and Rehear this Appeal or, alternatively, suggest that the matter be set down for argument before the Court en banc.

Respectfully submitted,

O'DONOGHUE & O'DONOGHUE

By

  
Ross O'Donoghue

  
George A. Fisher  
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Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been served by first class mail, postage prepaid, on John J. Wilson, Esq., 815 Fifteenth Street, N.W., Washington, D.C. 20005, attorney for appellee, this 29th day of February, 1972.

  
\_\_\_\_\_  
Ross O'Donoghue

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24,600

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ROBERT A. SCHMITZ,  
*Appellant,*

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS  
INDUSTRIELLES ET COMMERCIALES, S. A. also known  
as INTERNATIONALE INDUSTRIE UND HANDELSBE-  
TEILIGUNGEN, A. G.,

*Appellee.*

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APPEAL FROM A JUDGMENT OF THE UNITED  
STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

United States Court of Appeals  
for the District of Columbia Circuit

FILED DEC 15 1970

*Nathan J. Paulson*  
CLERK

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APPENDIX  
Volume I

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## United States District Court for the District of Columbia

[illegible]



## CIVIL DOCKET

## United States District Court for the District of Columbia

| DATE  |     | PROCEEDINGS  |
|-------|-----|--|
| 1967  |     | Deposit for cost by  |
| Jan.  | 11  | Complaint, appearance Jury Demand  |
| Jan.  | 11  | Summons, copies (1) and copies (1) of Complaint issued Ser. 1-19.  |
| Feb.  | 8   | Answer of deft. to complaint; c/m 2-8; appearance of Whiteford<br>Carroll & Wilson.  |
| Feb.  | 8   | Notice of deft. to take deposition of pltf.; c/m 1-8.  |
| Feb.  | 8   | Notice of (1) A/T.   |
| Feb.  | 10  | Motion of deft. for security for costs; c/m; PPA; M.C. 2-10  |
| Feb.  | 10  | Opposition of pltf. to motion for security for costs; c/m 2-10   |
| Mar   | 3   | Recommendation granting deft's motion for security for costs;<br>directing pltf file \$500.00 cash or \$1,000.00 bond within<br>days. (AC/N). Assistant Pretrial Examiner                                |
| Mar.  | 20  | Undertaking of pltf for security for costs in the amount of<br>\$1,000.00 with Hartford Accident & Indemnity Co. Agent   |
| May   | 4   | Depositions (2 volumes) of pltf. Schwartz 3-2-67 and 3-3-67  |
| Oct   | 4   | Certificate of readiness by pltf; c/m 10-3-67.   |
| Oct   | 9   | Objection of deft to ready certificate; c/m 10-6; M.C.   |
| Oct   | 23  | Called. Asst Pretrial  |
| Nov   | 17  | Motion of deft for production; c/m 11-17; memorandum: M.C.   |
| Nov   | 17  | Notice of deft to take depositions of Charles E. Wilson and<br>M. Sproffard; c/m 11-17.  |
| Nov   | 17  | Motion of deft for Letters Rogatory to take depositions of<br>Frey and Rene Niederer; c/m 11-17; memorandum: M.C.  |
| Nov   | 17  | Motion of deft for Letters Rogatory to take deposition of Dr. H.<br>Sturzenegger; c/m 11-17; memorandum: M.C.  |
| 1968  |     |  |
| Jan   | 3   | Opposition of pltf. to deft's motion for production; c/m 12-17   |
| Jan   | 19  | Recommendation sustaining deft's opposition to Certificate of<br>Readiness; staying Rule 13 until July 1, 1968. AC/N. Pltf.<br>have until said date to file Ready Certificate.<br>Asst Pretrial Examiner |
| Feb   | 0   | Recommendation dismissing motion of deft. to produce, without prejudice<br>to refiling if counsel are unable to agree. AC/N<br>Asst Pretrial Examiner  |
| -Aug- | -9- | Deposition of Robert H. Hansen for deft. PRECR<br>See next page  |

SCHMITZ

vs. SOCIETE INTERNATIONALE, C. A. No. 85-67

Supplemental Page

## PROCEEDINGS

|    |  |       |
|----|--|-------|
| 22 | Deposition of Charles M. Spofford by deft. published and   | filed |
| 22 | Deposition of Charles E. Wilson by deft. published and   | filed |
| 22 | Certificate of readiness of pltf.; c/m 6-27.   | filed |
| 22 | Objections of deft. to Certificate of Readiness of pltf.;<br>affidavit; M.C.   | filed |
| 22 | Recommendation sustaining objection of deft. to pltf's.<br>Certificate of readiness; extending time for filing<br>ready certificate to and including Jan. 3, 1969.<br>(N) Asst. Pretrial Examiner  |       |
| 22 | Deposition of Robert M. Hansman; \$14.00 paid by deft.   | filed |
| 22 | Deposition of Robert M. Hansman for deft. (fee \$17.50)  | filed |
|    | Order of deft. for extension of time to file ready certificate; P and<br>D   | filed |
|    | Certificate of readiness of pltf; c/m 1-3.   | filed |
|    | Order of deft. to pltf's certificate of readiness; c/m 1-6-69;   | filed |
|    | Order for letters rogatory: service of<br>written interrogatories within 15 days; 15 days to file cross<br>interrogatories from said service; deft. may serve redirected<br>interrogatories with 10 days from service; pltf. may submit<br>written interrogatories from service. (see order for details) |       |
|    | Micro 1-13-69 McGuire, J.  |       |
|    | Order to file certificate of readiness until April-<br>1969. Micro 1-24-69 McGuire, J.   |       |
|    | Order interrogatories of deft. to accompany Letters Rogatory for<br>Dr. Hans Sturzenegger's deposition.  | filed |
|    | Order interrogatories of deft. to accompany Letters Rogatory for<br>Dr. Hugo J. Frey's deposition.   | filed |
| 29 | Interrogating order of Jan. 17, 1969 extending the time for filing<br>a certificate of readiness; and placing case on ready calendar<br>as of Jan. 29, 1969. (Consent) (N) Micro 1-30-69 McGuire, J.   |       |
| 5  | Objections by pltf. to amended interrogatories propounded by deft.<br>to accompany letters rogatory for Dr. Hans Sturzenegger's<br>deposition; c/m 3/5/69; M.C.  | filed |

See over

| DATE |    | PROCEEDINGS  |                   |
|------|----|--|-------------------|
| 1969 |    |  |                   |
| Mar  | 5  | Objections of pltf. to amended interrogatories by deft. to accompany letters rogatory for Dr. Hugo A. Frey's deposition; c/m 3/5/69; . . .                                 | filed             |
| Mar  | 25 | Letters Rogatory and copy issued to Dr. Hugo Frey.   | filed             |
| Mar  | 25 | Letters Rogatory and copy issued to Dr. Hans Sturzenegger.   | filed             |
| Mar  | 25 | Stipulation re amended interrogatory.  | filed             |
| Apr  | 18 | Stipulation re objections to interrogatories or cross-interrogatories (FIAT) Pretrial Examiner.  |                   |
| May  | 9  | Stipulation that documents forwarded by Dr. H. Sturzenegger to Robert A. Schmitz may be admitted into evidence without formal proof of authenticity; exhibits A, B, C & D. | filed             |
| Sep  | 11 | Answers of Dr. Hugo A. Frey to letters rogatory and answers of Dr. Hans Sturzenegger to letters rogatory.  | filed             |
| Nov. | "  | Pretrial Proceedings.  | Pretrial Examiner |
| Nov. | 7  | Motion of pltf. to amend pretrial order; P&A; c/m 11-7-69. M.C.  | filed             |
| Nov. | 18 | Withdraw motion of pltf. filed 11-7-69; consent.   | filed             |
| Nov. | 18 | Stipulation that pretrial order date 11-3-69 shall be amended.   | Pretrial Examiner |
| Nov. | 26 | Motion of deft. to dismiss; P&A; exhibit A, B, C, D, & E; c/m 11-26; M.C.  | filed             |
| Dec  | 5  | Points & Authorities by pltf. in opposition to motion to dismiss; c/m 12-4.  | filed             |
| Dec  | 5  | Points & Authorities by pltf. in opposition to motion to dismiss; c/m 12-4.  | filed             |
| Dec  | 23 | Letter re witnesses by pltf.   | filed             |
| Dec  | 29 | Stipulation to withdraw Motion to Dismiss by deft. filed 11-26-69.   | filed             |
| 1970 |    |  |                   |
| Jan  | 2  | List of witnesses by deft.; c/m 12-31-69.  | filed             |
| Jan  | 2  | Notice of deft. to produce; c/m 12-30-69.  | filed             |
| 1970 |    |  |                   |
| Jan  | 5  | Withdrawal of jury demand per all counsel. Approved. N/AC McGarraghy.  |                   |
| Jan  | 5  | Hearing begun; respited to 1-6-70. (Reps: Marie Taylor) McGarraghy.  |                   |
| Jan  | 6  | Hearing resumed; respited to Jan. 7, 1970. (Reps: Marie Taylor, Shirley Hatch, Phyllis Harper)   | McGarrahy, J.     |
|      |    | (see next page)  |                   |

| Date     |    | Proceedings   |                |
|----------|----|---|----------------|
| 1970     |    |   |                |
| Jan      | 7  | Hearing resumed; respited to Jan. 8, 1970. (Reps: Marie Taylor, Doyne Spencer, Joan Blair)                      | McGarraghy, J. |
| Jan.     | 8  | Hearing resumed; respited to Jan. 9, 1970. (Reps: Marie Taylor, a.m.; Joan Blair, p.m.)                         | McGarraghy, J. |
| Jan.     | 8  | Deposition of Bruno Max Saager for the deft.  | filed.         |
| Jan      | 9  | Hearing resumed; respited until 1-12-70 at 10:00 a.m.<br>(Rptr. Marie Taylor)                                   | McGarraghy, J. |
| Jan      | 12 | Hearing resumed; respited to 1-13-70. (Rptrs: a.m. Marie Taylor; p.m. Shirley Hatch)                            | McGarraghy, J. |
| Jan      | 13 | Hearing resumed; respited to 1-14-70. (Rptrs: a.m. Marie Taylor; a.m. Phyllis Harper)                           | McGarraghy, J. |
| Jan      | 14 | Hearing resumed; respited to Jan. 15, 1970. (Rptr. Marie Taylor)  | McGarraghy, J. |
| Jan      | 15 | Hearing resumed; respited to Jan. 23, 1970. (Rptr. Marie Taylor)  | McGarraghy, J. |
| Jan      | 23 | Hearing resumed; respited to Feb. 2, 1970. (Rptr. Marie Taylor)   | McGarraghy, J. |
| Feb      | 2  | Hearing resumed; respited to 2-3-70 at 10:00 A.M. (rep: Marie Taylor)   | McGarraghy, J. |
| Feb.     | 3  | Hearing resumed; respited to February 4, 1970 (Rep: Marie Taylor)   | McGarraghy, J. |
| Feb      | 4  | Hearing resumed; respited to 4-7-70; trial briefs to be submitted by all counsel. (Rep: Marie Taylor)           | McGarraghy, J. |
| Feb      | 4  | Deposition of Charles M. Spafford for pltf.   | filed          |
| Feb      | 4  | Deposition of Samuel F. Pryor, III, for deft.   | filed          |
| Mar      | 7  | Hearing resumed; respited to April 8, 1970. (Rep: Marie Taylor)   | McGarraghy, J. |
| Mar      | 8  | Hearing resumed; concluded; taken under advisement. (Rptr. Marie Taylor)  | McGarraghy, J. |
| Mar      | 7  | Findings of Fact, Conclusions of Law and Opinion finding for deft.<br>(H)                                       | McGarraghy, J. |
| Mar      | 7  | Transcript of proceedings, January 5, 1970, Vol. 1, pages 1-55<br>(Reporter: Marie S. Taylor, court's copy)     | filed          |
| Mar      | 7  | Transcript of proceedings, January 6, 1970, Vol. II, pages 57-216.<br>(Reporter: Marie S. Taylor, court's copy) | filed          |
| See over |    |   |                |

| Date            |    | PROCEEDINGS  |               |
|-----------------|----|--|---------------|
| 1970            |    |  |               |
| May             | 7  | Transcript of proceedings, January 7, 1970, Vol. III, pages 217-231<br>(Reporter: Marie S. Taylor, Court's copy)     | filed         |
| May             | 7  | Transcript of proceedings, January 8, 1970, Vol. IV, pages 327-339<br>(Reporter: Marie S. Taylor, court's copy)      | filed         |
| May             | 7  | Transcript of proceedings, January 9, 1970, Vol. V, pages 516-528<br>(Reporter: Marie S. Taylor, court's copy)       | filed         |
| May             | 7  | Transcript of proceedings, January 12, 1970, Vol. VI, pages 653-667<br>(Reporter: Marie S. Taylor, court's copy)     | filed         |
| May             | 7  | Transcript of proceedings, January 13, 1970, Vol. VII, pages 943-950<br>(Reporter: Marie S. Taylor, court's copy)    | filed         |
| May             | 7  | Transcript of proceedings, January 14, 1970, Vol. VIII, pages 1071-1077<br>(Reporter: Marie S. Taylor, court's copy) | filed         |
| May             | 7  | Transcript of proceedings, January 15, 1970, Vol. IX, pages 1078-1115<br>(Reporter: Marie S. Taylor, court's copy)   | filed         |
| May             | 7  | Transcript of proceedings, January 23, 1970, Vol. X, pages 1116-1135<br>(Reporter: Marie S. Taylor, court's copy)    | filed         |
| May             | 7  | Transcript of proceedings, February 2, 1970, Vol. XI, pages 1271-1411<br>(Reporter: Marie S. Taylor, court's copy)   | filed         |
| May             | 7  | Transcript of proceedings, February 3, 1970, Vol. XII, pages 1412-1546<br>(Reporter: Marie S. Taylor, court's copy)  | filed         |
| May             | 7  | Transcript of proceedings, February 4, 1970, Vol. XIII, pages 1547-1745<br>(Reporter: Marie S. Taylor, court's copy) | filed         |
| May             | 15 | Judgment in favor of deft. vs pltf. with costs.  | McGarrahy, J. |
| May             | 25 | Motion of pltf. for reconsideration; P&A; c/m 5-25; M.C.   | filed         |
| May             | 25 | Motion of pltf. for additional time to file P&A in support of motion for reconsideration; P&A; c/m 5-25; M.C.        | filed         |
| May             | 26 | Proposed Findings of Fact and Conclusions of Law of deft.; c/m 3-4-70.   | filed         |
| May             | 26 | Proposed Findings of Fact of pltf.   | filed         |
| Jun             | 4  | Additional P&A of pltf. in support of pltf's motion for reconsideration; exhibits A & B; c/m 6-4.                    | filed         |
| Jun             | 12 | Memorandum of deft's in opposition to pltf's motion for reconsideration; c/m   | filed         |
| Jun             | 25 | Motion of pltf. for a new trial heard and taken under advisement.<br>(Rep: Marie Taylor)                             | McGarrahy, J. |
| (See next page) |    |  |               |



| Date    | PROCEEDINGS   |
|---------|---|
| 6       |   |
| Jul 1   | Motion of pltf. for reconsideration or to open judgment and take additional testimony - denied. (Signed 6-30-70) (N)  |
| July 27 | Notice of appeal by pltf from order of 5-15-70 copy mailed to John J. Wilson. Deposit by O'Donoghue \$5.00. <span style="float: right;">and McGarraghy, J.<br/>filed</span>             |
| July 27 | Cost bond on appeal by pltf in sum of \$250.00 with Hartford Accident & Indemnity Co.; approved. <span style="float: right;">filed</span>   |
| July 27 | Exhibits #1 thru 9, 11, 12, 14, 15, 16, 17, 17A, #18 thru 20, 21, 21A, 22 thru #153, 165 thru 207 by pltf. <span style="float: right;">filed</span>                                     |
| July 27 | Stipulation in re defts exhibits to be included in record on appeal with the exception of exhibits #18.(a), 18 (b), 18 (c); and 13 (1) and 65. <span style="float: right;">filed</span> |
| July 27 | Exhibits by deft #1, 2, 3, 3A, 4 thru 17, 19 thru 29, 29A, 30 thru 64, 66 thru 98. <span style="float: right;">filed</span>   |
| July 27 | Record on Appeal delivered to USCA; Deposit by Ross O'Donoghue  |
|         | USCA for original Record. <span style="float: right;">filed</span>  |
|         | Record on Appeal delivered to USCA; Deposit by Ross   |
|         | USCA for Supplemental Record. <span style="float: right;">filed</span>  |

[Caption Omitted in Printing]

COMPLAINT FOR MONEY JUDGMENT,  
DECLARATION OF TRUST, AND OTHER RELIEF

First Count

1. Plaintiff, Robert A. Schmitz, is a citizen of the United States and is a resident of the State of Connecticut. The defendant, commonly known in the past as I. G. Chemie, Societe Internationale pour Entreprises Chimiques et Commerciales, S. A. or Internationale Industrie und Handelsbeteiligungen, A. G., and more recently as Interhandel, and hereinafter so designated, is a corporation organized and existing under the laws of the Confederation of Switzerland. It is doing business in the District of Columbia through its agent, John J. Wilson.

2. This Court has jurisdiction of this case by reason of the provisions of Section 11-521 of the District of Columbia Code (1961 ed. Supp. V), the general equity powers of the Court in rem over a fund within the District of Columbia, and personal jurisdiction over John J. Wilson, the agent of defendant.

3. A fund of approximately one hundred twenty-one million dollars (\$121,000,000.00) was deposited in the Treasury of the United States for the credit of, and in the name of, defendant, of which approximately eighty-eight million dollars (\$88,000,000.00) has been paid out to Interhandel, leaving approximately thirty-three million dollars (\$33,000,000.00) still on deposit. Plaintiff has an equitable lien upon this fund for services performed in the employ of defendant as its agent in the creation and preservation of this fund.

4. The fund was derived from the sale to the public of 11,166,438 shares of stock of General Aniline and Film Corporation, (hereinafter sometimes referred to as "G.A.F.") a corporation organized and existing under the laws of the State of Delaware. These shares represent the stock of the company that was originally owned and controlled by defendant corporation from its incorporation until 1942. On February 15, 1942, the Secretary of the Treasury of the United States issued a Vesting Order seizing the shares as the property of an allegedly enemy-controlled corporation. The Secretary transferred the stock to the Alien Property Custodian on April 21, 1942, and he, in turn, transferred it to the Attorney General of the United States on October 15, 1946. In 1948, defendant instituted a suit against the Attorney General of the United States in the United States District Court for the District of Columbia in Civil Action No. 4360-48 seeking the return of its stock. A stipulation settling the suit ultimately was entered into, under the terms of which the G.A.F. stock was sold to the public and the proceeds thereof were divided between Interhandel and the United States in agreed proportions. It is the remainder of Interhandel's share of the proceeds that constitutes the fund in the United States Treasury and is the object of this suit.

5. For many years plaintiff had been intimately acquainted with the affairs of General Aniline and Film Corporation and its relationship to defendant Interhandel. His father, Dietrich A. Schmitz, now deceased, was President and Chairman of the Board of Directors of General Aniline and Film Corporation from its formation in 1939 until its vesting by the United States government in 1942. The said Dietrich A. Schmitz also had served as



the principal officer of G. A. F.'s predecessor corporation, which also was owned by Interhandel. After General Aniline and Film Corporation's seizure, Dietrich A. Schmitz spent virtually the rest of his life resisting the attempts of the government to maintain and justify the seizure. Plaintiff worked closely with his father in the latter's constant dealings with defendant corporation. Over the course of 15 years plaintiff acquired an intimate knowledge of the complicated relationship between defendant and its owners and managers, and he earned the friendship and trust of the said owners and managers, particularly of Dr. Hans Sternsiegger, the principal stockholder. The officers of defendant corporation came to rely on plaintiff's knowledge and judgment of the intricacies and vagaries of American policies and of the personalities of key American officials, especially as they related to the varying hopes and fears of the Swiss owners of G. A. F. and the prospects of salvaging their enormous investment in Interhandel's United States subsidiary, General Aniline and Film Corporation.

6. A number of American corporations sought to buy defendant's interest in G. A. F. not only because it was a valuable property, but also because they judged that an American corporation would be in a better position than a foreign corporation to obtain the return of the seized stock. Defendant Interhandel gave serious consideration to several proposals. From 1947 through 1958, plaintiff was, with the consent and encouragement of defendant corporation, successively authorized to act, and did act, on behalf of Remington Rand, Inc., Atlas Corporation, Shields and Co., W. R. Grace & Co., and Food Machinery and Chemical Corp., and, in anticipation of the

receipt of substantial fees and commissions, expended a great deal of time, money and effort to bring about such a purchase.

7. In December, 1948, while plaintiff was in Switzerland carrying on negotiations between the afore-mentioned Food Machinery and Chemical Corp. and defendant, he was told by the aforementioned Dr. Hans Sturzenegger that defendant had finally determined not to sell its interest in General Ariline and Film Corporation until it had brought to a conclusion its claim against the United States government. Because this Court's Civil Action No. 4366-18 seemed endless and because it felt that the handling of its claim had blackened its image and prejudiced its interests, defendant decided that it would itself negotiate with the United States government for the return of its G.A.F. stock or for compensation through an agent of its own choosing. Such agent would have to be of the highest standing and reputation. Plaintiff's cooperation in effecting these arrangements was solicited by defendant Interhandel. Plaintiff suggested the name of Charles E. Wilson, formerly President of the General Electric Company, as a possible agent to conduct these negotiations. He had been a high government official and was then serving as President of the People to People Foundation, to which position he had been appointed by President Eisenhower. Plaintiff was personally acquainted with Mr. Wilson, and suggested his name as Interhandel's representative because Mr. Wilson enjoyed the confidence and respect of prominent United States officials and could therefore negotiate at the highest levels of government. After several conferences with Mr. Wilson, plaintiff reported to Interhandel that Mr. Wilson could be persuaded to act only if he were offered full powers as

trustee to negotiate a settlement of the dispute upon such terms and conditions as would appear honorable and just to him. It was urged that the trusteeship would afford defendant complete protection and full accounting of the trustee's transactions and such powers could be terminable only upon the achievement of the objective. Plaintiff's suggestion was accepted and he was asked to attempt to bring about the trusteeship of Mr. Wilson. Dr. Sturzenegger made it clear, however, that, in the event the trusteeship could not be established, neither he nor defendant wanted a written record of the plan of or the arrangement for compensation of the plaintiff.

8. During these same meetings with Dr. Sturzenegger and other agents of defendant in December, 1958, plaintiff pointed out that adoption of this new approach would disable him from earning the fees and commissions on the purchase of defendant's interest for which he had worked so hard for so many years; that bringing about the Wilson trusteeship would be of great value and importance to defendant; and that it would take much time, travel and effort to give Mr. Wilson the necessary background to persuade him that defendant's cause was just, and to induce him to undertake the trusteeship. For these reasons, plaintiff asked for a fee from defendant corporation for bringing about the Wilson trusteeship equal to five percent of the proceeds to defendant of such settlement as the trustee might be able to obtain from the United States Government. Dr. Sturzenegger agreed that defendant would pay plaintiff a fee for bringing about the Wilson trusteeship, and suggested that two percent or three percent would be more acceptable to defendant's stockholders. Plaintiff did not consent and no agreement was reached on that occasion.

regarding the amount or percentage to be paid to plaintiff, but the clear understanding was that such fee should not be less than two or three per cent of the total sum obtained.

9. Plaintiff then proceeded with his efforts to bring about the tractation of Mr. Wilson. From the end of November, 1958 until May 23, 1960, when Mr. Wilson accepted the trust scheme - a period of sixteen months - plaintiff devoted almost all of his time, attention, and his own money resources, as well as much travel, to bringing about the desired result. This entailed three trips to Switzerland by plaintiff to confer with officials of Interhandel, and defendant corporation sent its representatives to New York three times to confer with plaintiff and Mr. Wilson. In confirmation that plaintiff was acting for defendant as its authorized agent in these negotiations, defendant, in May of 1960, reimbursed plaintiff \$13,733.00 for out of pocket expenses previously incurred. Plaintiff's task was extraordinarily difficult. Among other things, it was necessary for plaintiff to accomplish the following: (a) to provide the essential background to persuade Mr. Wilson of the merits of defendant's position in the dispute; (b) to convince him of the good faith and integrity of defendant's management; (c) to induce him to accept the feasibility of the trust approach; (d) to prevail upon him to commit his time, energy, and reputation to the effort; (e) to bring him together with defendant's owners, managers, and agents, in meetings in New York and Paris; (f) to maintain both confidence and contact between defendant and Mr. Wilson during a transfer in Interhandel's stock ownership and management, and during a period of publicity which reflected badly upon the good faith of defendant's management; (g) to give body and substance to the trust idea; and

(b) to draft a resolution of the Executive Committee of Interhandel's Board of Directors, an Option Contract, and a Power of Attorney acceptable in form and substance to both Mr. Wilson and to defendant. Plaintiff, by tenacious efforts, successfully accomplished all these tasks.

10. Mr. Wilson agreed to serve as trustee, and exercised his powers as such, because he believed in defendant's cause and regarded the continuation of I. H. I. as contrary to United States' interests, illegal, immoral and unwise. It was through the efforts of plaintiff that Mr. Wilson was so convinced. Mr. Wilson was to receive no compensation for his services as trustee. The only compensation which defendant undertook to pay, therefore, was the compensation to plaintiff, except that defendant also paid the trustee's attorney for legal services rendered to the trustee.

11. On or about October 26, 1939, Dr. Alfred Schaefer, Chief Executive and Chairman of the Executive Committee of defendant, confirmed the preliminary arrangement made by Dr. Sturzenegger with plaintiff and resolved the matter of compensation by agreeing that defendant Interhandel would pay plaintiff for the services he had performed five per cent (5%) of any monies which defendant might be able to obtain in settlement of its dispute with the United States Government, payment to be made when the settlement funds due Interhandel became available. Dr. Schaefer stated that defendant had no other source from which it could compensate plaintiff, and that this compensation would necessarily have to come out of the specific settlement proceeds of the subject matter of this dispute with the United States Government. Plaintiff did not ask for a writing because he trusted defendant

to honor its agreement and because Dr. Schaefer insisted that the previous understanding be followed and absolute secrecy be maintained. Dr. Schaefer emphasized that defendant did not wish to reveal the plan even to its lawyers, because of its vital, sensitive and uniquely confidential nature.

12. On May 23, 1960, Mr. Wilson accepted the trust powers, and plaintiff promptly communicated by transatlantic telephone the news of the acceptance to defendant. Plaintiff then had done everything he was required to do to effect his obligation under the contract.

13. Following Mr. Wilson's acceptance of the trust powers, and with plaintiff's continuous active cooperation, Mr. Wilson entered into intensive negotiations with the highest officials of the United States government in an effort to convince them of the merits of defendant's claim and of the unfairness and injustice of the government's resistance thereto. Largely as a result of these efforts the image of defendant was improved in the United States government circles, the most influential government officials were persuaded that justice demanded the recognition of Interhandel's claims.

14. As a result of Mr. Wilson's negotiations an offer was made by the Department of Justice in 1961 to pay seventy-five per cent (75%) of the proceeds of the sale of the stock of G.A.F. to Interhandel, with twenty-five per cent (25%) to be paid to the United States. Because of the representations made to Mr. Wilson by Interhandel that it was entitled to one hundred per cent (100%) of said proceeds and because of Mr. Wilson's conviction that a substantially larger percentage than seventy-five per cent (75%) should be obtained for defendant, this offer was not accepted and negotiations were

continued. At this point, despite its solemn promise as expressed in the trust instrument and otherwise that it would not deal in any way with the United States Government concerning the claim except through the trustee, Dr. Albert Schaefer, then chairman of the board of Interhandel and acting on its behalf, secretly and without the knowledge of Charles E. Wilson, entered into negotiations with the United States Government concerning the settlement of its claim. By disrupting the nearly completed negotiations, it made impossible a prompt settlement and made the trustee's position untenable. Mr. Wilson therefore withdrew as trustee. Thereafter and because of the disruption of the nearly completed negotiations, the government made a much reduced offer in the amount of less than fifty per cent (5%) of the proceeds of the sale of the stock. By its action Interhandel repudiated its trust agreement with Mr. Wilson and completely frustrated further negotiations by him. As a result of defendant's breach of its contract, it prevented a recovery that would have amounted to at least \$225,000,000.00 by reasons of which plaintiff would have been entitled to receive \$11,250,000.00 pursuant to his agreement with defendant. Since a recovery of the amount stated was obtainable by the trustee except for the interference by Interhandel in violation of its agreement, plaintiff is entitled to recover five per cent (5%) of the amount thus obtainable by the trustee, that is to say \$11,250,000.00.

15. Defendant and its stockholders would be unjustly enriched at the expense of the plaintiff if they were to receive the entire proceeds of the settlement of its claim against the United States without compensating plaintiff for his efforts and the results he obtained.



16. The payment to defendant made by the United States of America under the settlement of this Court's Civil Action No. 4360-48, the suit mentioned in Paragraph 4 above, is approximately \$145,000,000.00. That amount, minus claims of the United States for taxes, was deposited in the Treasury of the United States in defendant's name on April 14, 1965.

Second Count

1, 2, 3, 4, 5, 6, 7. For purposes of this Count, plaintiff incorporates herein by reference, paragraphs 1, 2, 3, 4, 5, 7 and 10 of Count One.

8. Following Mr. Wilson's acceptance of the trust powers, and from June 1, 1960 through December 31, 1961, plaintiff performed, almost continuously, a great amount of work for defendant. This work included assisting, advising and providing factual material to the trustee and his counsel; liaison between them and the defendant's management; reporting on and interpreting to the defendant's management, the work of the trustee as well as American views, policies, circumstances, conditions and events; receiving interested Swiss visitors to the United States, including representatives of defendant; and other tasks of importance on both sides of the Atlantic. This work commanded substantially all of plaintiff's time, thought, effort and attention, involved considerable travel, and required plaintiff to be available for consultation at all times. It precluded attention to other business matters. Plaintiff's capability to perform this work was unique.

9. It was understood between plaintiff and defendant that plaintiff would be compensated by defendant for the work described in paragraph 8 of



this Court. No final agreement was reached regarding the amount or rate of compensation. Plaintiff's work was solicited by defendant and valuable to it.

10. The services that plaintiff performed from June 1, 1960 to December 31, 1961, had a reasonable value of \$150,000.00. In fact, defendant paid plaintiff only \$38,000.00 which has been accepted by him merely as a payment on account.

11. There is due and owing from defendant to plaintiff the sum of \$112,000.00.

WHEREFORE, the premises considered, plaintiff demands:

1. That judgment be entered against defendant corporation in the amount of \$11,250,000.00, plus interest from April 14, 1965, plus costs;
2. That judgment be entered against defendant corporation declaring that plaintiff is entitled to receive out of the fund maintained in the United States Treasury in the name of Interhandel the sum of \$11,250,000.00 upon the release of that amount by the Attorney General of the United States acting under the Stipulation of Settlement filed in Civil Action No. 4360-48, and that upon such release and until such sum shall have been paid to plaintiff such sum shall be declared to be a trust for the benefit of plaintiff;
3. That, if necessary, a receiver be appointed to receive and hold a sum of \$11,250,000.00 from said fund pending determination of plaintiff's complaint; and

4. That the Court afford such other or further relief as the exigencies of this case may require.

5. Plaintiff demands a trial by jury on all issues.

\_\_\_\_\_  
Robert A. Schmitz

O'DONOGHUE & O'DONOGHUE

By \_\_\_\_\_  
Ross O'Donoghue  
420 Union Trust Building  
Washington, D. C. 20005  
Attorneys for Plaintiff

DISTRICT OF COLUMBIA, ss:

I, Robert A. Schmitz, do depose and say that I have read the foregoing Complaint for Money Judgment, Declaration of Trust, and Other Relief, subscribed by me, and know the contents thereof; that the matters and things stated therein of my own personal knowledge are true and those stated on information and belief I believe to be true.

\_\_\_\_\_  
Robert A. Schmitz

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ANSWER TO COMPLAINT

FIRST DEFENSE TO BOTH COUNTS

This Court lacks jurisdiction over the subject matter of the Complaint.

SECOND DEFENSE TO BOTH COUNTS

This Court lacks jurisdiction over the person of the defendant.

THIRD DEFENSE TO BOTH COUNTS

Venue for the alleged causes of action is improper in the District of Columbia.

FOURTH DEFENSE TO BOTH COUNTS

There was insufficiency of process to maintain this action in the District of Columbia.

FIFTH DEFENSE TO BOTH COUNTS

There was insufficiency of service of process to maintain this action in the District of Columbia.

SIXTH DEFENSE TO BOTH COUNTS

Defendant was not and is not doing business in the District of Columbia, either through John J. Wilson or otherwise; and John J. Wilson was not and is not defendant's agent, and defendant did not and does not have an agent in the District of Columbia.

SEVENTH DEFENSE TO BOTH COUNTS

The complaint fails to state claims against defendant upon which relief can be granted.

EIGHTH DEFENSE TO BOTH COUNTS

The statute of limitations bars the maintenance of the alleged causes of action against defendant.

NINTH DEFENSE TO THIRD COUNTS

The statute of frauds bars the alleged causes of action against defendant.

TENTH DEFENSE TO FIRST COUNT OF COMPLAINT

Defendant makes the following answers to the individual paragraphs of the first count of the complaint:

1. First and second sentences admitted. Third sentence denied.
2. Denied.
3. Denied.
4. Averments regarding facts of vesting, institution of suit and stipulation of settlement are admitted. Other averments denied as made.
5. Averments regarding official positions of D.A. Schmitz with SZP and its predecessor are admitted. All other averments are denied.
6. Denied.
7. Admits that plaintiff suggested Mr. Charles E. Wilson's name to defendant as a possible representative to conduct negotiations with United States Government, and that defendant permitted plaintiff to contact Mr. Wilson for that purpose. All other averments are denied, either because they are controverted by defendant or because they are argumentative and conclusory. It is specifically denied that Dr. Sturzenegger had anything to do with any arrangement for compensation of plaintiff.
8. Denied.
9. Denied because either controverted or argumentative and conclusory, except payment of about \$13,000.

10. Admits that Mr. Wilson agreed to accept power of attorney and to serve without compensation for himself and only for reimbursement for his expenses and fees of his counsel. All other averments are denied.

11. Denied.

12. Admits that Mr. Wilson accepted power of attorney; but denies entire second sentence, including existence of any contract.

13. Denied.

14. Denied except that it is admitted that Mr. Wilson withdrew and Dr. Schaefer contacted United States Government officials concerning settlement of the Internandel controversy.

15. Denied.

16. Denied as averred.

TENTH DEFENSE TO SECOND COUNT OF COMPLAINT

Defendant makes the following answers to the individual paragraphs of the second count of the complaint:

1-7. Answered in foregoing and incorporated herein.

8. Denied.

9. Denied.

10. Denied, except admits \$32,000 payment.

11. Denied.

WHEREFORE, having fully answered said complaint, defendant says that plaintiff is not entitled to any of the relief sought; and defendant therefore prays that said complaint may be dismissed with prejudice, and its reasonable costs allowed.

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November 3, 1969

Action for a money judgment.

THE PARTIES AGREE TO THE FOLLOWING STATEMENT OF FACTS AND  
STIPULATE THERETO:

A fund of approximately \$121,000,000.00 was deposited in the Treasury of the United States for the credit of the D, a Swiss corporation, as its share of the proceeds of the sale of stock of General Aniline and Film Corporation (hereinafter called G.A.F.), which had been seized by the United States on February 15, 1942. The seizure was based upon allegations that G.A.F. was owned by an enemy-controlled corporation. This sale and subsequent deposit was made in settlement of a suit brought by the D here against the United States in this Court in Civil Action No. 4360-48, demanding return of the stock so seized. Contemporaneously with the prosecution of the suit, negotiations were held between representatives of D Interhandel and representatives of the U. S. government, which continued over the course of many years.

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THE CLAIMS OF THE PLAINTIFF otherwise as to facts and as to the damages claimed are set out in the statement which is attached hereto, made a part hereof and incorporated herein by reference marked "A-1" through "A-4" inclusive.

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THE DEFENDANT admits that P suggested the name of Charles E. Wilson to D as a possible representative to conduct negotiations with the United States government; that P contacted Charles E. Wilson for that purpose; and that Charles E. Wilson accepted a power of attorney dated on or about May 23, 1960 under which he agreed to seek a settlement of D's pending suit and to serve without compensation for himself and only for reimbursement for his expenses and fees of his counsel. D admits that Charles E. Wilson withdrew as its negotiator and the settlement thereafter effected was not in any way connected with his efforts or the efforts of the P.

D says that no one had authority to enter into the agreements and understandings alleged in the complaint and it denies the existence of any oral or written contract or understanding with the P to pay him all or any of the sums alleged to be due to him. D denies that the P performed services in the creation or preservation of the settlement fund and further denies that the P performed services of value to it during the period of June 1, 1960 through December 31, 1961 for which he has not been compensated.

In 1962 and from time to time thereafter, D, both orally and in writing, advised P that it had no agreement or understanding to pay him any sum whatsoever. The claims which P is advancing herein were rejected in 1962 and at various times thereafter.

Further the D asserts that the Court lacks jurisdiction over the subject matter of this action and over the person of the



D; that venue for the alleged causes of action is improper in the District of Columbia; that there was insufficiency of process to maintain this action in the District of Columbia and insufficiency of service of process to maintain this action in the District of Columbia on the basis that D was not and is not doing business in the District of Columbia, either through John J. Wilson or otherwise; and John J. Wilson was not and is not D's agent, and D did not and does not have an agent in the District of Columbia.

FURTHER the D asserts that it rejected the P's claims on or about February 13, 1962, and this action which was filed more than three years thereafter is barred by the statute of limitations, 12 D. C. Code 301; that P's claims are barred by laches; that the statute of frauds, 28 D. C. Code 3502, bars the alleged causes of action against D; that the fund alleged to be held in the Treasury of the United States has been paid to D and the alleged equitable lien cannot attach; that P's alleged causes of action sound in equity and the P is not entitled to a trial by jury; that under the laws of Switzerland which are ~~applicable~~ applicable to the causes of action alleged, the P is not entitled to any relief.

Further D asserts that the P has failed to state claims against D upon which relief can be granted on the basis of all of the foregoing and pursuant to Rule 12 of the Federal Rules of Civil Procedure.

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FURTHER STIPULATIONS:

Witnesses known to D:

Dr. Alfred Schaefer, Dr. Ulrich Wehrli and Mr. Bruno Saager, all of Switzerland

The parties agree to file with the Clerk of the Court and to mutually exchange, on or before November 15, 1969, a list of the names and addresses of any witnesses known to them (other than those listed herein), including expert witnesses, who have knowledge of any aspect of this case, indicating those who may be used at the trial. Impeachment witnesses are not to be included.

The D agrees to furnish P within 10 days from this date a statement as to (1) the exact amount of D's share of the proceeds of the sale of the G.A.F. stock and (2) the amount presently retained in the Treasury of the United States in the name of defendant corporation.

It is agreed that all documents initialled by counsel for both parties hereto may be admitted in evidence at trial for all purposes, subject only to objections as to relevancy and materiality.

The parties have heretofore stipulated as to documents forwarded by Dr. Hans Sturzenegger and described in four lists. Such stipulation is hereby incorporated herein.

[Subscription Omitted in Printing]

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The plaintiff had long been intimately acquainted with the affairs of G.A.F. inasmuch as his father, Dietrich A. Schmitz, had been president and chairman of the board of directors of G.A.F. from its formation in 1939 until its seizure in 1942. The said Dietrich A. Schmitz had also served as principal officer of G.A.F.'s predecessor corporation, which also was owned by defendant Interhandel. Plaintiff worked closely with his father during and after World War II in the latter's resistance of the government's attempts to maintain and justify the seizure. Following the war, plaintiff and his father met a number of times with Dr. Hans Sturzenegger, who was the principal stockholder of the defendant Interhandel from 1945 until late 1958, and with Dr. Sturzenegger's successor, Dr. Alfred Schaefer. In many of their negotiations looking toward a resolution of Interhandel's claim against the United States for the return of G.A.F., plaintiff suggested to Dr. Schaefer that Charles E. Wilson, formerly president of the General Electric Company, a former government official and confidante of President Eisenhower and other high officials of his administration, be formally designated by Interhandel as a trustee, with plenary powers, to negotiate with, and settle its claims against, the United States.

Plaintiff advised Dr. Sturzenegger and Dr. Schaefer that it might well be very difficult to persuade Mr. Wilson to undertake the trusteeship since he would first have to be convinced of the righteousness of Interhandel's claim, especially of the fact that G.A.F. was never enemy-controlled, and, then would have to have assurances that he would be given the authority to enable him to act effectively. Plaintiff pointed out that all of this would require a great deal of work, travel and research. Defendant, however, through its

principal officers, stated that if a man of Mr. Wilson's caliber could be persuaded to represent its interest, defendant felt the greatest confidence in the success of his representations to the American government. Defendant also recognized that because of plaintiff's familiarity with the whole history of the problem and his friendship with Mr. Wilson, he was the logical, and indeed only acceptable, person to attempt to bring about Mr. Wilson's acceptance of the trust.

Plaintiff asked Dr. Sturzenegger to agree to a fee of 5% of any ultimate recovery as compensation for the difficult task he was about to undertake and for his hoped for success in obtaining the services of Mr. Wilson. While still serving as Interhandel's principal officer, Dr. Sturzenegger indicated a willingness to pay at least 2% or 3% on behalf of defendant. Plaintiff embarked upon his difficult task. On or about October 26, 1959, Dr. Alfred Schaefer, chief executive officer and chairman of the executive committee of defendant Interhandel, confirmed the preliminary arrangement made by Dr. Sturzenegger with plaintiff and specifically agreed to pay 5% of any money recovered to plaintiff, if he could persuade Mr. Wilson to serve.

When it appeared that plaintiff's efforts would be successful, plaintiff met with Interhandel's principal officers at their headquarters at Zurich, and there drafted the proposed trust powers and the resolution to be passed by the defendant corporation authorizing it to enter into the trust agreement with Mr. Wilson. He met with Dr. Schaefer and Mr. Wilson, and Mr. Spofford, representing Mr. Wilson, and Mr. Ulrich Wehrli, representing the corporation, in Paris on April 28, 29 and 30, 1960, where an agreement was tentatively reached and a promise to pay plaintiff 5% of the proceeds was

reconfirmed. On May 23, 1960, Mr. Wilson formally accepted the trust powers. The obtaining of Mr. Wilson's acceptance constituted full performance by plaintiff of his obligations under his agreement with Interhandel. Thereafter, and by agreement with Interhandel and with the trustee, the plaintiff worked closely with Mr. Wilson for a period of approximately eighteen (18) months, keeping him fully informed and acting as intermediary with the defendant. Plaintiff travelled extensively, participated in numerous meetings in Switzerland, New York and Washington, and gave abundantly of his time and knowledge in connection with the preparation of an elaborate orientation and background memorandum to be submitted to the United States officials. As a result of Mr. Wilson's representations, the United States initially offered to pay to the defendant 50% of the proceeds of sale of G.A.F. stock, but in June of 1961 an offer to pay 75% of the proceeds to Interhandel was made. Mr. Wilson, however, persevered in his attempt on behalf of the defendant and under its instructions, to obtain 100% of the stock for defendant. Shortly thereafter, however, Dr. Schaefer, in violation of the trust agreement, opened direct negotiations with the United States government and agreed to accept 50% of the proceeds to be derived out of the sale of G.A.F. stock.

Under the terms of the settlement which Mr. Wilson could have completed with the United States government, defendant Interhandel would have received \$225,000,000.00. Under his contract with the defendant, plaintiff was, and is, entitled to \$11,250,000.00 representing 5% of the recovery that the trustee could have obtained from the United States government but for



Interhandel's breach of the contract with the plaintiff and with the trustee. In settling for 50%, approximately \$145,000,000.00 was recovered by the defendant and deposited in the defendant's name in the Treasury of the United States on April 14, 1965. Five percent (5%) of the recovery represents the amount agreed to be paid to the time of the acceptance of the trust powers by Charles E. Wilson in May of 1960. The additional services performed by plaintiff for the defendant from June 1, 1960 to December 31, 1961, had a reasonable value of \$150,000.00, of which \$38,000.00 has been paid and which was accepted on account.

#### DAMAGES:

The damages claimed by plaintiff are liquidated in part and unliquidated in part. The liquidated portion of his claim related to his entitlement to a fee of five percent (5%) of the avails of the settlement. The total liquidated damages amount to \$11,250,000.00. The unliquidated portion of his claim relates to the reasonable value of his services after the acceptance of the trust powers by Charles E. Wilson. Plaintiff states that his services rendered between June 1, 1960 and December 31, 1961, had a reasonable value of \$150,000.00, of which \$38,000.00 has been paid on account.

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[Caption Omitted in Printing]

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#### OPINION

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Mr. Ross O'Donoghue, Mr. George A. Fisher,  
O'Donoghue & O'Donoghue, for Plaintiff

Mr. John J. Wilson, Mr. Frank H. Strickler,  
Whiteford, Hart, Carmody & Wilson, for Defendant

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Plaintiff, Robert A. Schmitz, seeks compensation for services rendered defendant corporation, Societe Internationale Pour Participations Industrielles et Commerciales, S.A., (hereinafter Interhandel).

Plaintiff's complaint and pre-trial statement listed two counts. The first was for services rendered as a "finder" who procured Mr. Charles E. Wilson to act as agent for Interhandel. The second was for services rendered to Interhandel after Mr. Wilson consented to represent Interhandel.

At trial, plaintiff announced that he would proceed only with Count 1, that is, for compensation for procuring the services of Mr. Wilson. Only this is before the court.

The case was tried by the court, the parties having waived jury trial.

Preliminarily, the court finds the following:

A. This suit is not barred by the Statute of Limitations.<sup>1/</sup> The fund out of which plaintiff claims he was to be paid became available in April, 1965. Suit was timely commenced January 10, 1967.

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<sup>1/</sup> 12 D.C.Code, §301 (1967 ed.)

B. Under the ruling in Kelberine v. Societe Internationale, Etc., 124 U.S. App. D.C. 257, 261-262, 363 F.2d 989, 993-994 (1966), cert. den. 385 U.S. 989, this court has jurisdiction of the defendant corporation by virtue of service of process on its agent, Mr. John J. Wilson.

Plaintiff seeks recovery on an alleged express oral contract or for equitable relief through the imposition of an equitable lien on a fund in the sum of \$121,000,000.00.

The case was tried in such a manner that relief would be proper <sup>2/</sup> under any of three theories:

1. Express contract;
2. Implied contract to pay a reasonable compensation; or
3. Relief in quasi-contract to prevent unjust enrichment of the defendant.

#### HISTORICAL BACKGROUND

The controversy which is the basis of this suit has been before the District of Columbia courts many times since 1948. While it is unnecessary to retell all its colorful history, some background must be provided to properly consider plaintiff's claim for compensation.

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<sup>2/</sup> Cf. Fed.R.Civ.P. 15(b)

In 1941, just prior to America's entry into World War II, Interhandel, a Swiss corporation, owned 90% of the stock of the American corporation, General Aniline & Film Corporation (hereinafter GAF).

On February 16, 1942, under the authority of the Trading with the Enemy Act of 1917,<sup>3/</sup> the Secretary of the Treasury seized all of Interhandel's GAF holdings on the theory that Interhandel was in fact a front for I.G. Farbenindustrie, A.G., a German corporation, and, therefore, the GAF stock was really enemy controlled.

After the war, there were several fruitless diplomatic attempts by Interhandel to regain its holdings in GAF.

Then, in 1948, Interhandel brought suit<sup>4/</sup> in this court under section 9(a) of the Trading with the Enemy Act, seeking return of the vested GAF shares. From the start, the litigation was ensnarled in myriad procedural difficulties. The case travelled up and down the judicial ladder<sup>5/</sup> of appeal.

3/ 50 U.S.C. Appx. 5(b)

4/ Civil Action No. 4360-48

5/ 86 U.S. App. D.C. 157, 180 F.2d 406 (1950)  
 88 U.S. App. D.C. 296, 183 F.2d 1017 (1951), rev.  
 343 U.S. 156 (1952)  
 96 U.S. App. D.C. 232, 225 F.2d 532 (1955), cert. den.  
 350 U.S. 937 (1956)  
 100 U.S. App. D.C. 148, 243 F.2d 254 (1957), rev.  
 357 U.S. 197 (1958)

Finally, in 1958, ten years after the suit was filed, the United States Supreme Court<sup>6/</sup> cleared up the procedural problems, reinstated the cause of action, and finally gave Interhandel an opportunity to be heard on the merits.

And yet, even then, because of the extreme complexity of the case, and because over 300,000 documents, which had been produced by defendant via discovery proceedings, had yet to be examined, the case was by no means ready for trial.

Dr. Hans Sturzenegger, a close friend of the plaintiff, was in control of Interhandel until 1958, when he resigned his directorship and relinquished his control to three leading Swiss banks - Union Bank, Credit Suisse, and Swiss Bank Corporation. In June, 1959, Dr. Sturzenegger sold most of his stock to Union Bank.

By reason of its acquisition of this stock, Union Bank assumed a prominent role in the management of Interhandel. The Chief General Manager of Union Bank, Dr. Alfred Schaefer, became head of Interhandel.

Prior to 1958, there had been attempts by various American corporations - such as W. R. Grace Co., Bell & Howell, Food Machinery and Chemical Corporation - to acquire ownership of GAF.

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<sup>6/</sup> Societe Internationale Etc. v. Rogers, 357 U.S. 197, 78 S.Ct. 1037, 2 L.Ed.2d 1255.

In 1958, the idea of settling the Interhandel controversy by negotiation directly with the United States Government became both more desirable and more feasible.

Although the details were by no means clear, Dr. Sturzenegger, his attorney, Dr. Hugo Frey, and the plaintiff considered obtaining the services of some highly reputed American to act as an intermediary between the Swiss principals and the United States Government. The name of Mr. Charles E. Wilson was suggested by the plaintiff.

Mr. Charles E. Wilson had had a long and distinguished career in both government and business in the United States.

He was formerly the President of General Electric Corporation, Chairman of the Board of W. R. Grace Co., and a member of the Board of Directors of Morgan Guaranty and Trust Company in New York. He had previously served under President Franklin D. Roosevelt as Executive Vice-chairman of the War Production Board, and under President Truman as the Defense Mobilizer during the Korean War. In 1958-59, he was serving as the Chairman of the People to People Foundation.

Plaintiff's activities concerning the acquisition of the services of Mr. Wilson will be examined in detail later. For now, suffice it to say that the possibility of Mr.



Wilson's serving as an intermediary or "trustee" for the Swiss was broached to him by the plaintiff in 1958 and early 1959.

There was a short hiatus in the dealings with Mr. Wilson when Dr. Sturzenegger divested himself of control of Interhandel. However, activities were renewed with the new head of Interhandel, Dr. Alfred Schaefer, in October, 1959.

Plaintiff claims that on October 26, 1959, Dr. Schaefer, as head of Interhandel, expressly offered plaintiff 5% of any amount recovered by Interhandel from a settlement with the United States Government on condition that plaintiff procure the services of Mr. Charles E. Wilson to act as Interhandel's "trustee" or agent in dealing with the United States Government. It is on this alleged promise that plaintiff bases this law suit.

On April 29, 1960, Mr. Charles E. Wilson, his attorney, Mr. Charles Spofford of New York, Dr. Alfred Schaefer, his attorney, Dr. Wehrli, and the plaintiff met to consider Mr. Wilson's willingness to act on behalf of the Swiss.

The Swiss proposed to name Mr. Wilson as their sole and exclusive agent (called a trustee) in dealing with the United States Government concerning the GAF shares. Mr. Wilson was to have an unlimited, irrevocable power of attorney concerning Interhandel's interest in GAF.

On May 23, 1960, Mr. Wilson agreed to accept these broad powers.

Mr. Wilson and his attorney, Mr. Spofford, began the task of convincing the United States Government - specifically the Department of Justice - that this long, seemingly interminable, case should be settled out of court.

The evidence is not clear as to the extent of the negotiations between Mr. Wilson and Mr. Spofford on the one hand, and the Department of Justice on the other, although it is clear that contact was made with the Department and possible settlement arrangements were discussed, but without finality.

The November 1960 Presidential election had a crucial effect on negotiations. It became clear to Mr. Wilson that further negotiation with the outgoing Republican Administration would prove fruitless. Serious negotiations could not resume until the new Democratic Administration - specifically the new Justice Department - had familiarized itself with the case.

Discussions with the Department of Justice were resumed during the summer of 1961 but without any agreement being reached.

It was during the summer of 1961 that Dr. Schaefer and the other Swiss principals became exceedingly restless.

The trustee had not delivered the expected early end to the dispute. The change of administration seemed, to Dr. Schaefer anyway, to have greatly reduced the effectiveness of Mr. Wilson.

Therefore, Dr. Schaefer attempted to deal directly with the new Attorney General, Mr. Robert F. Kennedy. After several vain attempts, a meeting between Mr. Kennedy and Dr. Schaefer was held in late October, 1961.

Although it was understood that it would take several years to work out the details, Mr. Kennedy and Dr. Schaefer basically agreed that a settlement on a 50-50 basis was most feasible.

After Dr. Schaefer's direct negotiations with Mr. Kennedy, Mr. Wilson expressed a willingness to withdraw completely as trustee. From the October, 1961 meeting between Mr. Kennedy and Dr. Schaefer, Mr. Wilson ceased to participate in any negotiations concerning Interhandel. In March, 1963, he formally terminated his trusteeship.

On December 20, 1963, a Stipulation of Settlement was signed by Attorney General Kennedy and Mr. John J. Wilson, the attorney of record in the original civil action.

After protracted proceedings in this court concerning the settlement and the status of various intervenors, a sale of the GAF shares was effectuated by the

Attorney General in April, 1965. Interhandel's net share of the proceeds was \$121,000,000.00. It is from this recovery that plaintiff seeks compensation.

Plaintiff contends that, except for the intervention of Dr. Schaefer, Mr. Charles E. Wilson would have been able to negotiate a disposition of the matter at least as favorable, and possibly more favorable to Interhandel, than that which was the result of the intervention of Dr. Schaefer with the Attorney General.

This obviously is pure speculation. No agreement had been reached during the period when Mr. Charles E. Wilson and his attorney, Mr. Spofford, were actively engaged and the record is devoid of any evidence from which a determination can be made of the part which their efforts contributed to the ultimate result which was accomplished.

Of course, there is no claim by Mr. Wilson for compensation for his services, he having expressly stipulated that he would not accept any fee. As explicitly provided in the original agreement naming Mr. Wilson as Interhandel's agent, Mr. Spofford, as Mr. Wilson's attorney, was paid in full the amount of his fee which was not questioned by Interhandel.

BACKGROUND OF THE PLAINTIFF

Plaintiff was well informed concerning the history of Interhandel. His father, Dietrich A. Schmitz, served as President of American I.G. Chemical Corporation, which was merged with Ansco Corporation in 1939 to form GAF. Dietrich A. Schmitz served as President of GAF until the 1942 vesting order.

Plaintiff was the nephew of Hermann Schmitz who had formed I.G. Chemical Corporation - the predecessor of Interhandel. Plaintiff was also the nephew of Dr. Albert Gadow who, at one time, was the General Manager of Interhandel. Also, plaintiff had a very close friendship with Dr. Hans Sturzenegger who had virtual control of Interhandel from 1940 to 1953.

No one contends that plaintiff was not well versed in all phases of the Interhandel controversy.

Because of his expertise, plaintiff had been employed by several American corporations relative to the possible purchase of GAF stock. In the early 1950s, plaintiff was employed by Remington Rand as their representative in seeking acquisition of GAF. Thereafter, plaintiff was employed by W. R. Grace Co. from August, 1953, through May, 1956, as a consultant in connection with its efforts to acquire GAF.

In 1958, plaintiff (as an emissary of Food Machinery & Chemical Corporation) approached Dr. Sturzenegger concerning a sale of GAF. Other corporations, including Shields & Co., National Lead Company, and General Dynamics Corporation, also made overtures to plaintiff concerning employment related to Interhandel and GAF.

#### EXPRESS CONTRACT

In this suit plaintiff places most of his emphasis on the theory of express contract.

As heretofore stated, plaintiff claims that, on October 26, 1959, Dr. Schaefer, the chief Director of Interhandel, orally promised him 5% of the value of any proceeds Interhandel might obtain in a settlement with the United States Government on condition that the plaintiff procure the services of Mr. Charles E. Wilson as trustee for Interhandel. Plaintiff claims he had a vested right to the 5% commission at the moment Charles E. Wilson accepted the trusteeship in May, 1960, regardless of the means by which a settlement was accomplished, but that actual payment would of necessity be delayed until the settlement fund actually became available.

Only the plaintiff and Dr. Schaefer were present when the alleged oral promise was made. Plaintiff insists that there was such an agreement; Dr. Schaefer is equally



adamant in opposition. In this posture, the court must look for evidence which corroborates either the plaintiff or Dr. Schaefer.

After hearing fourteen days of testimony during which several hundred documents were introduced in evidence, and after having the benefit of thorough oral argument, the court is of the opinion that the plaintiff has failed to prove by a preponderance of the evidence that there was an express oral contract for a 5% commission or any commission for procuring the services of Mr. Charles E. Wilson.

1. The alleged contract was not in writing. The court realizes that it was not necessary that such a contract be in writing. Yet, careful business men (in which group both the plaintiff and Dr. Schaefer belong) invariably memorialize their agreements in writing. This would be the case especially when millions of dollars were at stake. Lack of a writing, in this situation, raises a serious question as to the existence of such an agreement.

2. Plaintiff contends that the extreme secrecy surrounding the entire Interhandel affair precluded any writing. This is highly questionable. In spite of the alleged secrecy, there was prolific correspondence between the plaintiff and Dr. Schaefer on many topics. A simple writing between the parties would not have destroyed the needed secrecy.

Surely, after Mr. Wilson's acceptance of the trusteeship became public, in May, 1960, there was no need for secrecy.

Also, it is noteworthy that all of plaintiff's agency agreements with American corporations from 1950 to 1958 had been in writing.

3. It was not until January 17, 1962 (almost 20 months after Mr. Wilson's acceptance of the trusteeship, and more than 26 months after the alleged promise was made, and well after Mr. Wilson's activities had ended), that the plaintiff, in writing, alluded specifically to the alleged 5% agreement.

For one to wait so long, after what is alleged to have been a very specific promise, before specifically referring to that promise, seems unusual.

4. Plaintiff was compensated, at \$2,000.00 per month, for services rendered Interhandel after Mr. Wilson accepted the trusteeship. This compensation continued from June 1, 1960 through December 31, 1961. In some of the plaintiff's correspondence with Dr. Schaefer concerning this compensation, he made vague, general statements about his "capital interest" in the eventual settlement. Such vague statements are not those of a man who has received a firm promise of a 5% commission.

5. The testimony conclusively showed that no one else had ever heard of the 5% agreement until plaintiff's January 17, 1962 letter. Even Mr. Charles E. Wilson, the trustee, who was one of plaintiff's main witnesses, admitted that the plaintiff never specifically told him that plaintiff was entitled to the 5% commission at the moment Mr. Wilson accepted the trusteeship.

6. In plaintiff's letter of July 13, 1960 (9 months after the alleged promise had been made) to Dr. Sturzenegger the following appears concerning plaintiff's compensation:

(Dr. Frey) . . . appeared inordinately concerned about my personal welfare and affairs, and seemed worried that, whereas had this matter eventuated in 1958-1959, I would have been assured good treatment, on the other hand; perhaps Schaefer and Union Bank would be otherwise. I told him that, although I had no deal, I was not primarily concerned here at the moment, but that there was a job to be done, independently, by an independent trusteeship, for the good all around to end this sad case properly. Enough said here. (Emphasis added)

If plaintiff had a firm promise for a 5% commission in October, 1959, it is highly unusual that he should tell his close confidant in July, 1960 that he had "no deal" and was not "primarily concerned" with a deal but with getting the job done.

7. As shown above, plaintiff's family was very deeply involved in Interhandel's history. Plaintiff, time and again, claimed that his primary concern was to force the United States Government to correct what he considered to be a grievous injustice to his family and to the Swiss. Such evidence shows the existence of motives other than monetary for plaintiff's actions.

8. Plaintiff claims that he was offered the 5% commission if he could convince Mr. Charles E. Wilson to act as Interhandel's agent. To be sure, the whole Interhandel affair was unique and unprecedented. Such situations do require something more than the usual mode of operating. And yet, it strains credulity to believe that such a large commission was offered to do so little.

The idea of a trusteeship had been broached to Mr. Charles E. Wilson at least ten months prior to plaintiff's October, 1959 meeting with Dr. Schaefer. It is true that Mr. Wilson had not accepted the trusteeship in October, 1959, yet he had been considering it for some time. He insisted on being convinced of the validity of the Swiss claim. This plaintiff attempted to do. Plaintiff gave extensively of his time and energies. He spent many hours providing background information on the entire Interhandel controversy and the various Swiss personalities involved.

Mr. Wilson also made it clear that he would not act for the Swiss unless his own government gave at least tacit approval.

All of this had transpired prior to plaintiff's October, 1959 meeting. While it cannot be said that Mr. Wilson was totally committed to accepting the trusteeship in October, 1959, it also cannot be said that the idea was totally foreign to him. In other words, after October, 1959, it is highly questionable whether plaintiff had to do much convincing of Mr. Charles E. Wilson.

9. Prior to this, plaintiff had received generous offers from various American corporations to act as their agent in procuring GAF assets. But the largest offer was for \$900,000.00 from Shields & Co. if plaintiff's negotiations with Interhandel brought about a sale of GAF.

It is not reasonable that plaintiff should be offered over \$6,000,000.00 (5% on the \$121,000,000.00 settlement) for his activity as a finder of an agent when he was offered \$900,000.00 by another corporation for his activity as the primary agent and primary negotiator in securing GAF assets.

In sum, the court is convinced that there is no evidence - except plaintiff's ipse dixit - of the existence of an express oral contract to pay a 5% commission. Plaintiff has failed to prove an express contract.

RELIEF ON AN IMPLIED CONTRACT OR IN QUASI-CONTRACT

Failure to recover on an express contract does not preclude recovery on an implied contract or in quasi-contract.

In a case like the one at bar, where one renders services at the request of another, with the expectation of compensation, and in the process, confers a benefit on another, something in the nature of an implied contract results. Hill v. Waxberg, 237 F.2d 936, 938 (9th Cir. 1956); U.S. v. Alpha-Continental, et al., 273 F.Supp. 758, 775 (E.D.N.C. 1967); St. Louis Testing Lab., Inc. v. Mississippi Valley Structural Steel Co., 254 F.Supp. 47, 55 (E.D.Mo. 1966), aff'd 375 F.2d 565 (8th Cir. 1967); 1 Williston, Contracts, §36 (3rd ed. 1957).

The law recognizes an obligation of the employer to pay reasonable compensation for these services. Woodruff v. New State Ice Co., 197 F.2d 36, 38 (10th Cir. 1952); In re Moyer, 190 F.Supp. 867, 873 (W.D.Va. 1960); T.O. Metcalf Co. v. Crossroads, Inc., 121 Vt. 147, 151 A.2d 307, 311 (1959); 98 C.J.S., Work & Labor, §§65, 66(2) (1957).

Cases which enunciate such principles often use either an implied contract or a quasi-contract as the vehicle for providing relief. Often courts are rather inexact in defining whether an implied contract exists



or whether plaintiff is entitled to relief on a quasi-contract to prevent unjust enrichment. 3 Corbin, Contracts, §566 (1960).

It is certainly reasonable for the court to find that the facts of this case entitle plaintiff to relief on either theory. On either theory, plaintiff has shown that he is entitled to reasonable compensation for his services.

As was pointed out in Hill v. Waxberg, supra, at p. 939:

While the distinction (between an implied contract and a quasi contract) may be somewhat doctrinaire, the application of certain formalized distinctions is necessary in order to arrive at the proper measure of damages.

If a true contract of employment exists, the measure of damages is the usual compensatory scheme of contract damages which is measured by the compensation usually paid in the community for those services. If relief is truly in quasi-contract, the employer is required to pay compensation for the benefit he has received.

While there are technical differences between the implied contract measure of damages and the quasi-contract measure, in suits for compensation, these different formula produce the same results.<sup>7/</sup> The employer is required to

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<sup>7/</sup> Cf. Costigan, Implied-in-Fact Contracts, 33 Harv.L.Rev. 376, 383 (1920)

pay compensation equal to the reasonable value of the services rendered.

It is up to the court as fact-finder to determine what is the reasonable value of the plaintiff's services to defendant. However, it is axiomatic that the fact-finder cannot decide an issue unless there exists some evidence at trial on that issue. There must be something introduced in evidence upon which the fact-finder can base a verdict. Speculation cannot supply the place of proof. Moore v. Chesapeake & Ohio Railroad Co., 340 U.S. 573, 578, 71 S.Ct. 428, 430, 95 L.Ed. 547, 550-551 (1951); Controller of California v. Lockwood, 193 F.2d 169, 172 (9th Cir. 1951); McNamara v. American Motors Corp., 247 F.2d 445, 450 (5th Cir. 1957).

In the case at bar, the issue which the court must determine concerns the reasonable compensation to which plaintiff is entitled for the services he performed for defendant.

When there has been no evidence as to the reasonable value of plaintiff's services, the fact-finder has nothing upon which to base its verdict - except sheer speculation.

In a suit for compensation for services rendered, there can be no recovery unless there has been some evidence of the reasonable value of plaintiff's services.

As was said in Sullivan v. District of Columbia Paper Mills, 67 R.I. 330, 23 A.2d 765, 767-768 (1941):

Assuming that the plaintiff performed some such services, we find in the record before us no evidence showing their reasonable value. If the plaintiff is attempting, under the common counts, to recover compensation for such services from the defendant, he has the usual burden of proof, as part of his case, to establish by competent evidence their reasonable value . . . There is no direct evidence as to the reasonable value of these services. Any finding by us as to such value would, therefore, be based on conjecture.

Failure to establish the reasonable value of plaintiff's services in a suit for compensation based on implied contract or on quasi-contract is fatal to recovery. The authorities on this point are unanimous. Eg, Grau v. Mitchell, 156 Colo. 111, 397 P.2d 488, 489-490 (1964); T. O. Matecalf Company v. Crossroads, Inc., 121 Vt. 147, 151 A.2d 307, 311 (1959); Bianco v. Floetex, Inc., 145 Conn. 523, 144 A.2d 310, 312 (1958); D'Avenzo v. Shreveport Restaurants, Inc. 71 So.2d 698, 699 (La.App. 1954); Raeves v. Vallow, 95 P.2d 945, 946 (Cal.App. 1939); Automatic Sprinkler Corporation of America v. Ruffner Hotel, 110 W.Va. 67, 156 S.E. 887 (1931); Meyer-Kiser Corporation v. Dooley, 100 Fla. 243, 129 So. 592 (1930); Terry Realty v. Noctin, 220 Ala. 282, 124 So. 901, 903 (1929); In re Davies Estate, 289 Pa. 579, 137 A. 728, 731 (1927); Winch v. Warner, 174 N.Y.S. 819, 822 (App.Div.1919);

McDaniels v. Harrington, 80 Ore. 628, 157 P. 1068, 1070, (1916); 98 C.J.S., Work & Labor, §§ 57, 65.

Without some evidence as to the reasonable value of plaintiff's services, the court simply has no basis for a decision - other than speculation.

In cases where the value of services is of common knowledge, the fact-finder is permitted to establish value from its own knowledge. DeWald v. Norris, 297 S.W.2d 738, 743 (Mo.App. 1965); 98 C.J.S., Work & Labor, §57.

These cases involve some very common type of service such as nursing. Certainly the case at bar does not fall within this exception to the general rule.

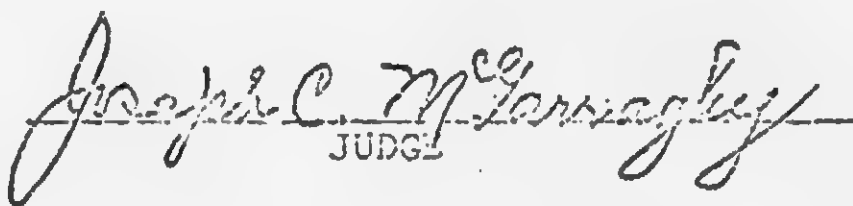
The court is compelled to deny recovery in the case at bar. There is no evidence as to the value of the plaintiff's services. There was evidence concerning the compensation other corporations were willing to pay the plaintiff for his services as their agent in negotiating a purchase of GAF assets from Interhandel. But this is not evidence of the value of plaintiff's services for defendant as the finder of Mr. Charles E. Wilson. Certainly, services rendered as the prime agent and prime negotiator are materially and substantially different from those for which plaintiff now seeks compensation.

None of the above mentioned evidence concerned the reasonable value of plaintiff's services in procuring the services of Mr. Charles E. Wilson.

Failure to prove the reasonable value of plaintiff's services is fatal to recovery.

Judgment will be entered for defendant.

This Opinion will serve as the court's Findings of Fact and Conclusions of Law.

  
JUDGE

May 7, 1970

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[Caption Omitted in Printing]

FINAL JUDGMENT

This cause came on for trial by the Court, a jury having been waived, and evidence having been adduced by the parties, and counsel having submitted proposed findings of fact and conclusions of law, and having orally argued their respective positions, the Court upon consideration of all of the foregoing on May 7, 1970 filed its Opinion herein, in which its Findings of Fact and Conclusions of law appear, and having found therein that all relief shall be denied plaintiff, it is, by the Court, this 15<sup>th</sup> day of May, 1970

ORDERED, pursuant to Rule 58 of the Federal Rules of Civil Procedure, that judgment be and it is hereby entered for the defendant; and that allowable costs shall be taxed against the plaintiff.

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DISTRICT JUDGE

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[Caption Omitted in Printing]

PLAINTIFF'S MOTION FOR RECONSIDERATION  
OR, ALTERNATIVELY, TO OPEN THE JUDGMENT  
AND TAKE ADDITIONAL TESTIMONY

Comes now the plaintiff, by counsel and moves this Honorable Court to reconsider its opinion and judgment in the above referenced civil action and to open the Judgment, heretofore entered, and take additional testimony, and in support thereof states as follows:

1. The Opinion of the Court in lieu of Findings of Fact and Conclusions of Law was filed in this case on May 7, 1970, and a Judgment in favor of the defendant was entered on May 15, 1970.

2. Plaintiff's action was predicated upon two bases: (a) an oral contract with defendant whereby, if plaintiff was successful in obtaining the consent of Charles E. Wilson to serve as trustee for defendant in connection with its effort to resolve its long-pending suit against the government, plaintiff would be paid 5% of the avails of such settlement, out of the fund itself, by the trustee, and (b) an equitable lien upon the fund. In its Findings and its Conclusions, the Court rejected both bases and disallowed any recovery by plaintiff for the services which he rendered to defendant.



3. The Court's determination that plaintiff failed to prove his oral contract is against the weight of the evidence. In support of its determination, the Court has set forth nine separate circumstances which it apparently feels discredit the evidence plaintiff presented in support of his claim. It should immediately be noted that the Court apparently was reacting to what appeared to be the cumulative effect of these circumstances since none of the nine matters cited, standing alone, could rebut plaintiff's assertion.

4. The contract was not in writing and for good reason. The GAF controversy was a tremendously complex international controversy involving hundreds of millions of dollars. Because the settlement of this matter involved high finance, politics and much emotion, any effort to bring about such a settlement had necessarily to be a very sensitive endeavor and had to be accomplished without harmful publicity. For this reason plaintiff was required by the defendant and later by the trustee to remain out of the limelight. The wisdom of this requirement is pointed up by the attached newspaper article which appeared when the plaintiff herein sought to intervene in defendant's return suit (Civil No. 4360-48), and which is designated as Exhibit "A" hereto. Moreover, because plaintiff trusted the promises of the defendant made to him in Zurich and in Paris (See, e.g., Pl. Ex. No. 70) and because he knew and respected the trustee who would be satisfying plaintiff's claim, plaintiff had no reason to believe that he would not be paid out of the Thirty Million Dollars (\$30,000,000.00) which Dr. Schaefer told the trustee he could spend in order to satisfy claims. (See, Tr. 228, 392) Plaintiff's letter of July 13, 1960, (Def. Ex. No. 1) did not relate to defen-

defendant's express promise to pay him 5%, but rather was directed toward compensation which plaintiff might receive for interim services. (See. Pl. Ex. No. 78; compare Def. Ex. No. 1 with Pl. Ex. No. 70) For plaintiff to ignore financial consideration in connection with the unique services which he rendered would have been foolish in light of plaintiff's large family, his declining personal wealth and the time, effort and expense he devoted to defendant's cause. In all of plaintiff's earlier arrangements with would-be American corporate purchasers, plaintiff always took steps to insure that he would be compensated for his efforts. In fact, testimony was presented to show that on one occasion plaintiff would have been entitled to receive \$175,000.00 each plus an option to buy ten percent (10%) of the stock acquired by the successful purchaser, with financing guaranteed, had the acquisition been completed. (Tr. 63, 477-78, 801; Pl. Ex. No. 6)

5. The Court's determination that plaintiff's claim in quantum meruit must fail because of a failure to prove damages is improper. There was ample evidence presented at trial to demonstrate the value of the trusteeship to Interhandel. The dramatic increase in the value of Interhandel's shares on the Zurich bourse, added some 55 to 60 million dollars to the net worth of Interhandel. It was enriched by this amount as a direct and immediate result of plaintiff's effort. Plaintiff was entitled to a proportionate share of such enrichment. The fact that the trustee had authority to expend Thirty Million Dollars (\$30,000,000.00), if necessary, to satisfy claimants in this controversy. (Tr. 228, 892) is indicative of the value which Interhandel itself placed upon the trusteeship. This was a measure of the value that the

defendant itself placed on these services. These measures are, however, sufficient to enable the Court to determine a just and reasonable amount for the value of plaintiff's services.

6. The Court has attempted to follow the wellknown rule that speculative damages may not be awarded. The trier of the facts is not authorized or required to determine damages where the damages are uncertain, but this principle of speculation with regard to damages is not applicable to the amount, but only to the existence of damages at all. Here services were proved as recognized by the Court in its opinion, but the Court has said there was not proof of the value of the services. As the Supreme Court said in Story Parchment Company v. Paterson Parchment Paper Company, 282 U.S. 555-560 (1931), the uncertainty as to the amount of damages will not defeat a claim on the theory of speculation. Where damages have been established, it is for the trier of the facts to fix the fair amount of such damages, in this case the fair value of the services based on the benefits conferred by plaintiff's activities to the defendant.

7. If, however, the Court believes that actual proof of the value of services is necessary for recovery by the plaintiff, then the Court is requested to reopen the proceedings in accordance with the provisions of Rule 59, of the Federal Rules of Civil Procedure, to permit plaintiff to present evidence as to the value of the services performed by him.

WHEREFORE, the premises considered, plaintiff moves this Court to reconsider the decision heretofore reached in the instant case or, alternatively, to open the Judgment and take additional testimony.

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Exhibit "A", May 19, 1964

## Washington Merry-Go-Round

DREW PEARSON

### Washington.

Two heart-breaking legal proceedings which have some bearing on each other are taking place in opposite parts of the world today. One is in Frankfurt, Germany, where the Nazi killers of Auschwitz are on trial; the other in Washington, D. C., where the war-torn property of I. G. Farben is being disposed of.

In Frankfurt, gruesome testimony tells of special rations of liquor and cigars for Nazis who performed extra work in killing Jewish prisoners. A Polish doctor who served as a clerk at Auschwitz told of keeping the records of 130,000 male inmates killed.

In Washington, in the other court proceeding, Attorney General Kennedy has authorized the sale of General Aniline and Film, the very valuable property once owned by I. G. Farben, back, in part, to the Swiss company which served as the dummy for I. G. Farben.

It was, of course, I. G. Farben which used the Auschwitz slave labor.

Despite this, and despite the fact that every other U. S. Attorney General has refused to return any of I. G. Farben's property, Bobby Kennedy has now completed a deal whereby \$60,000,000 will revert to Interhandel.

The big mystery is—why? Perhaps Sen. Keating (R-N. Y.), a member of the Senate Judiciary Committee with a good record on religious fairness, should investigate.

\* \* \*

Meanwhile, a side court action which sheds some light on the dickering over I. G. Farben's property in the U. S., has been filed in the U. S. District Court in Washington. It's a petition to get a slice of the profit from the sale of General Aniline & Film, filed by Robert A. Schmitz, an American whose uncle, Herman Schmitz, was convicted as a war criminal for building the I. G. Farben plant alongside Auschwitz in order to use Jewish slave labor. Robert Schmitz's father,

Derrick, was the head of General Aniline, I. G. Farben's property in the U. S.

He now claims a 5 per cent commission for helping arrange the sale of General Aniline stock and tells an interesting story about the scramble to get hold of this valuable property. Between 1947 and 1949, Schmitz says, he was successively authorized to act as agent for Remington Rand, headed by the late Gen. Douglas MacArthur; the Atlas Corporation, headed by financier Floyd Oshinsky; Shields and Co.; W. R. Grace and Co.; Ford Machinery and Chemical, all anxious to obtain this valuable property.

Schmitz also tells how in December, 1958, it was decided to pick an important American to negotiate with the U. S. government—namely Charles E. Wilson, former president of General Electric, who had served as chairman of the War Production Board and was president of Ike's People-to-People Foundation.

\* \* \*

Wilson served without pay, according to Schmitz, because he believed in Interhandel and looked upon the confiscation of I. G. Farben's property as against U. S. interests—also illegal and immoral.

In the summer of 1961, Robert F. Kennedy had become Attorney General and appeared to reverse the policies of all previous Attorneys General that the General Aniline and Film property should not be sold back to any organization having ties with I. G. Farben. Previous Attorneys General had consistently ruled that Interhandel was a cloaking operation for I. G. Farben.

When Bobby Kennedy took over, the help of Charles E. Wilson was no longer considered necessary. Interhandel felt confident that with Kennedy running the Justice Dept. it would be able to obtain the property which other Attorneys General, both Republican and Democratic, had refused to relinquish.

So Wilson was given the hint to bow out. He did so in November, 1962.

[Caption Omitted in Printing]

ADDITIONAL POINTS AND AUTHORITIES IN SUPPORT  
OF PLAINTIFF'S MOTION FOR RECONSIDERATION  
OR ALTERNATIVELY TO OPEN THE JUDGMENT  
AND TAKE ADDITIONAL TESTIMONY

I

THE EVIDENCE PRESENTED AT TRIAL ESTABLISHED  
THE EXISTENCE OF A VALID ORAL PROMISE TO  
COMPENSATE PLAINTIFF AND TO AFFORD HIM  
AN EXPRESS EQUITABLE LIEN UPON THE  
PROCEEDS OF THE SETTLEMENT

A. Ample Evidence was Presented at Trial to Prove Dr. Schaefer's Promise to Compensate Plaintiff and to Give him an Equitable Lien.

1. The Promise Itself.

Plaintiff testified at trial that on October 26, 1959, Dr. Alfred Schaefer, the chief executive officer of defendant corporation, unequivocally promised that plaintiff would be paid a sum equal to 5% of the avails of the expected settlement of the General Aniline and Film controversy if plaintiff was able to obtain the consent of Charles E. Wilson to serve as defendant corporation's trustee in negotiating with the United States Government for a settlement of the GAF matter. (Tr. 155-56, 397-98, 426, 431-32) Payment was to be made by the trustee out of the fund representing the proceeds of the sale. (Tr. 155-56, 397-98, 431-32) Plaintiff was cross-examined vigorously by defendant's trial counsel, but his version of the October 26, 1959 meeting was not contradicted.

2. The Reasonableness of the Promise.

Under all of the circumstances of the case, the promise of a 5% "commission" was a fair and reasonable compensation for the services which



plaintiff was to render.<sup>1</sup> At the time that the promise was made, defendant corporation had very little prospect of a prompt resolution of its suit seeking the return of GAF. In fact, the prospects for ever securing the return of this property were bleak. (Tr. 29, 544, 548, 1295) Defendant corporation with the aid of the Swiss Government previously had attempted various interventions with United States Government officials to try to secure the return of their property but all had been complete failures. (Tr. 15, 16, 1299-B, 1583, 1649; Def. Ex. No. 86; Pl. Ex. No. 105) Since GAF, which represented approximately 90% of Interhandel's total assets, was declining in value (Tr. 902, 981, 1283-84, 1373; Pl. Ex. No. 161) and since a complete reorganization of Interhandel's management had only shortly before taken place, (Tr. 1276, 1278) the Swiss were "exceedingly anxious" to secure the return of their property. (Tr. 1298) Moreover, the Swiss stockholders were becoming increasingly vocal about the delays in the resolution of the GAF controversy. (Tr. 195; Pl. Ex. Nos. 187, 194) In fact, in 1959, the only access the Swiss had to the United States Government and to the former management of GAF was through the plaintiff and his experience and knowledge were unique and invaluable to them.

Plaintiff was a "finder" of the trustee in the most literal sense of the word. It was plaintiff who originally conceived of the idea of the Swiss

1

In fact, testimony was present to show that on one occasion plaintiff would have been entitled to receive \$175,000.00 cash plus an option to buy ten per cent (10%) of the stock acquired by the successful purchaser, with financing guaranteed, had the acquisition been completed. (Tr. 63, 477-78, 881; Pl. Ex. No. 6)

appointing an American citizen of indisputable integrity and sound judgment to assume a trusteeship of GAF for the benefit of the Swiss and to undertake negotiations on their behalf with the United States Government. (Tr. 149-54, 648, 1288-89; Pl. Ex. Nos. 22, 23, 25) It was plaintiff too, who put forth the name of Charles E. Wilson and it was plaintiff who had the means whereby he could secure the consent of this distinguished American to serve the Swiss.

"A 'finder', it has been said, 'is one who finds, interests, introduces and brings together parties for a deal, even though he has no part in negotiating the terms of the transaction. [citing cases] As compensation for his services, a finder customarily receives a commission or finder's fee, frequently based upon a prior oral agreement with the party for whom he did the finding."

Baldwin v. Grymes, 232 Md. 470, 194 A.2d 285, 287 (1963); see also Ames v. Ideal Cement Co., 37 Misc. 2d 883, 235 N.Y.S. 2d 622, 625 (1962).

### 3. Plaintiff's Finder's Agreement had to be Kept Secret.

Because of the sensitive nature of the proposed Wilson trusteeship, it was agreed by plaintiff and Dr. Schaefer that the entire matter of plaintiff's agreement with defendant corporation must be maintained in strictest confidence. (Pl. Ex. Nos. 22, 23) Consequently, there was no written agreement between the parties setting forth their agreement and it is submitted in matters such as this, a written agreement would have been quite unusual. See Hardy-Latham v. Wellons, 415 F.2d 674 (4th Cir. 1968); Baldwin v. Grymes, supra. A prime reason for the secrecy requirement was the fact that news of the effort to establish the trusteeship would activate the stock market and possibly touch off wild speculation. (Tr. 1276, 1402) Rejection of the proposed trusteeship, of course, would drive down the price of Interhandel

shares, (See Tr. 150, 156) and make it impossible to secure the services of any other distinguished Americans to aid their cause. Aside from the speculative nature of the matter, however, the plaintiff and the Swiss both realized that the linking of the name "Schmitz" to the proposed trusteeship could have adverse consequences in view of the connection of Hermann A. Schmitz and Dietrich A. Schmitz to the GAF controversy. The former was the financial head of I. G. Farben, who had been accused after World War II of war crimes, although later found not guilty at Nuremberg, (Tr. 152, 481) and the latter was alleged by the government to be Farben's agent in the United States. The wisdom of maintaining strict secrecy was pointed up several years later when Drew Pearson made sensational charges against plaintiff when he sought to intervene in Civil Action No. 4360-48. See attached Exhibit "A".

4. There was Corroborative Evidence to Confirm the Promise.

The promise of compensation made to the plaintiff by Dr. Schaefer was corroborated at trial in several ways. Plaintiff's Exhibit No. 70, a letter written by Dr. Schaefer to the plaintiff under date of August 30, 1960, made reference to defendant's agreement in Zurich and in Paris "to hold at your disposal certain sums as a compensation for the time you spent in this connection". Since there was no evidence of any discussion in Zurich that plaintiff should render any services to the trustee following acceptance of the trust, this letter can only mean that the Swiss agreed to set aside definite sums to compensate plaintiff for his services in obtaining the trusteeship itself. Moreover, Charles E. Wilson testified that at the Paris conference

Dr. Schaefer declared that plaintiff would be "well taken care of" for the job that he "had done". (Tr. 895-96, 1021-23)

The existence of the promise to compensate plaintiff for devoting his full time and effort to the Swiss cause for a period of seven months (i.e., between late October, 1959 and late May, 1960), if not for the longer period from December, 1958 through May 23, 1960, during which plaintiff had been pursuing the trusteeship goal for the Swiss, is much more reasonable than the supposition that plaintiff was willing to donate his time and effort to the Swiss cause without remuneration. Ample evidence was presented at trial to show that in all of plaintiff's past dealings with would-be corporate purchasers of GAF, plaintiff always insisted upon first reaching an agreement as to his compensation. Secondly, several references were made during the course of plaintiff's direct and cross-examination to his large family and to his declining personal wealth as he began to devote more and more time and effort to a resolution of the GAF controversy.

5. The Amount of the Commission was not Unreasonable.

In its Opinion filed May 7, 1970, the Court states that "it strains credulity to believe that such a large commission was offered [to plaintiff] to do so little". Opinion, p. 12. The Court, of course, had reference to plaintiff's testimony that he had been promised compensation equal to 5% of the avails of the anticipated settlement if he could secure Mr. Wilson's acceptance of the trusteeship. Plaintiff submits that the Court is not considering the case with a proper perspective. The Swiss were greatly impressed with the reputation and ability of Charles E. Wilson (Tr. 155, 701-02, 720, 1288) and

they felt that if Mr. Wilson would serve as their trustee he could soon resolve the long drawn out, seemingly interminable struggle to regain GAF.

(Tr. 800, 1298) The Swiss were not able by themselves to secure Mr. Wilson's agreement to act as their agent. Plaintiff was the key to unlocking the door to secure Mr. Wilson's services, and all his capacities and reputation. Relying upon plaintiff's familiarity with Mr. Wilson, they accepted at face value plaintiff's statement that Mr. Wilson would not accept compensation for his services if he were to act as trustee. (Tr. 155) It is not surprising then to find that the Swiss offered plaintiff the compensation which ordinarily they would have been willing to pay Charles E. Wilson for working out a settlement. Compared with the evidence that the Swiss were willing to pay \$20,000,000 to \$30,000,000 out of the settlement proceeds to satisfy all claims against GAF, Interhandel's properties in the United States. (Tr. 228, 892) the offer of a 5% commission is not out of line.

The defendant did not intend to compensate plaintiff for the amount of services which he was to render on their behalf in attempting to secure the consent of Mr. Wilson, but they intended to compensate him for the result which his services obtained. This is a common situation in business where very often a contact, or even knowledge of a business opportunity, can mean success or failure in a particular endeavor. The 5% figure represents the value to Interhandel of securing Mr. Wilson's agreement to serve on their behalf. They were not interested in the time spent or the labor exerted by plaintiff in accomplishing this purpose. An analogy can be drawn between the plaintiff's services in the present case and the services of a real estate broker in arranging for the sale of a valuable property. In cases involving

real estate brokers the Courts inevitably will enforce a contract providing the broker with a fixed commission regardless of the amount involved so long as he has tendered performance under his contract. Palmer v. Gleason, 154 Colo. 145, 389 P.2d 90 (1964); Nelson v. Reinhart, 47 Nev. 246, 219 Pac. 554 (1923); 12 C.J.S. Brokers, § 112 ( ed.) In this context it is appropriate to consider the language of the Supreme Court of Wisconsin in a suit by a broker for the recovery of his commission.

"However, a real estate broker's commission is not based upon the amount of services but on the result of the services. A broker may spend much time and money trying to sell a piece of property, and fail entirely, while again he may succeed in making a sale at the expenditure of very little time or money. To hold that Ellis is not entitled to the amount of his claim is to disregard the testimony as to the value of such services." In re Kayser's Est., 190 Wis. 189, 208 N.W. 895, 897 (1926)

Since plaintiff and Dr. Schaefer were dealing with each other at arms length on October 26, 1959, and no evidence has been presented that there was any over-reaching on the part of the one or the other at that meeting, the Court should not be concerned about the value which the parties mutually placed upon plaintiff's services.

B. Plaintiff Felt no Need to make a Record to Confirm his Compensation Agreement Since the Entire Matter was One of Trust and he was to Look to the Trustee for Payment.

In the Court's Opinion a great deal of emphasis is placed upon the fact that plaintiff did not immediately seek written or other confirmation of his compensation agreement once the trusteeship had been created. It must be remembered, however, that plaintiff's dealings with the Swiss involved the highest degree of mutual trust and fair dealing. In view of the praise heaped



upon plaintiff at the Paris conference by Dr. Schaefer, (Tr. 225, 895-96, 1017, 1027) and in view of the fact that plaintiff was to be compensated for his services by the trustee out of the avails of the settlement, (Tr. 155-56, 397-98, 431-32) neither plaintiff nor defendant considered it necessary to formalize their understanding. (E.g., Pl. Ex. No. 70) Testimony was presented at trial that the trustee had been advised that plaintiff had an agreement with the Swiss whereby they would pay him 5% of the settlement (Tr. 1023) even though the trustee did not then recall when or under what circumstances the money was to be paid. The trustee also testified that at the Paris conference Dr. Schaefer told the plaintiff that he would be "well taken care of" for the job he had done. (Tr. 895-96) Attached hereto and designated Exhibit "B", is an affidavit executed by Charles E. Wilson subsequent to the trial of this case setting forth his understanding that he was to be responsible for the payment of plaintiff's fee under his powers and trust and that he would have paid plaintiff not less than 5% of the sums that he would have recovered.

## II

### THERE IS AMPLE EVIDENCE IN THE RECORD TO JUSTIFY THE AWARD OF DAMAGES TO PLAINTIFF ON AN IMPLIED CONTRACT OR IN QUASI-CONTRACT

#### A. The Court has Declared that Plaintiff is Entitled to Reasonable Compensation for his Services.

Plaintiff has established to the Court's satisfaction that he is entitled to be compensated for the services which he has rendered to defendant corporation. Opinion, p. 15. Accordingly, the Court has declared that there has been a breach by Interhandel of a contractual obligation to plaintiff, albeit one implied in law, and that plaintiff is entitled to recover for the resulting

damages he has sustained. Ibid, pp. 15-16. The Court declined to award damages, however, for the reason that it did not believe that plaintiff has presented evidence of the reasonable value of his services.

B. Plaintiff did not Introduce Expert Testimony to Show the Value of his Services Because the Record Contains Many Indicia of their Value.

The Court has concluded that no evidence as to the reasonable value of plaintiff's services in creating the trusteeship was adduced. Plaintiff respectfully disagrees. From the outset, the Swiss placed a very high value on the benefit they expected to receive from the trusteeship and this value found many expressions.

On the one hand, there are references in the record to the importance that the Swiss placed upon the trusteeship in terms of national honor and pride. The acceptance of the trust by Mr. Wilson was looked upon as a vindication of the Swiss and the righteousness of their case. At Paris, Dr. Schaefer pledged the honor of Switzerland and his own honor that Interhandel was free from enemy control or taint. (Tr. 223, 799, 890-91, 1299, 1299-A) But the best expression of the importance of the trusteeship is contained in the Resolution adopted by the Executive Committee of defendant's board of directors wherein, among other things, it is declared:

"We submit and truly believe, that, while not only being just and morally right, the return to us of our heretofore vested property-of-record by the United States Government will do much to help clear the way towards an earliest effective implementation of a number of high policies and programs of the United States Government, and will serve the cause of peace, free private enterprise, and enhance the relations and prestige between the United States of America and all free nations of the world, ..."

On the other hand, the record contains several references to the economic value of the trusteeship to the Swiss. At the Paris conference, Dr. Schaefer was so anxious to obtain the services of Charles E. Wilson as trustee that he pledged \$29,000,000 to \$30,000,000 to satisfy whatever claims might be presented against the settlement fund (Tr. 228, 892) giving the trustee sole discretion to settle these matters. (Tr. 230, 1301) On the Zurich Bourse, the quotations for Interhandel stock rose gradually while the negotiations were under way and steeply when the acceptance of the trusteeship was publicly announced. (Tr. 1480) The acceptance of the proffered trusteeship by Charles E. Wilson caused an increase of over 2,000 Swiss francs per share on the Zurich exchange, or approximately 450 American dollars per share. (Tr. 1481) This meant, since there were approximately 110,000 shares outstanding, that the value of Charles E. Wilson's acceptance of the trusteeship, as appraised in the stock market, was approximately 55 million dollars. (Tr. 1483) The value of the stock maintained this level during the entire period of the active trusteeship and was still quoted at 4,900 Swiss francs in October, 1961. (Tr. 1484) It was only after the interference of Dr. Schaefer and his offer to accept only half the value of its GAF stock that the quoted value of the stock fell appreciably. (Tr. 1485) As it was, the ultimate amount received by Interhandel for its GAF stock was almost precisely the same as the price of the stock after Charles E. Wilson's acceptance of the powers. (Tr. 1483)

The right to the use of the money represented by Interhandel's share of GAF has a great value, too. Dr. Schaefer no doubt anticipated that Charles E. Wilson would be able, by his influence, to obtain a prompt return of the GAF shares (Tr. 800, 1304; Pl. Ex. No. 160) and thus not only make

certain what was otherwise doubtful, but also enable the Swiss to earn many years of interest from the lending of such money. Indeed, if the value of Interhandel's share of the GAF stock is accepted as approximately \$120,000,000, the amount ultimately received, the interest on this amount for only a single year would be at least \$7,200,000, and probably much more if the high interest rates even then prevailing in Europe are taken into account.

C. Defendant Corporation should not be Permitted to Escape Liability Because of Uncertainty in the Amount of Damages to be Awarded.

A party which has broken its contract will not be permitted to escape liability because of uncertainty in the amount of the damages resulting therefrom. The fact that the full extent of the damages for the breach may be a matter of speculation is not a ground for refusing all damages.

" [I]n applying the rule against the recovery of uncertain damages, it is the uncertainty as to their nature, and not as to their measure or extent, that is meant. While the actual amount of damages from the breach of a contract may not be susceptible of exact proof, the law does not permit one whose act has resulted in loss to another to escape liability on this account. The manner of measuring the damages having been ascertained, impossibilities in proving same are not required, but only that the best evidence be adduced of which the nature of the case is capable; in other words, the degree of certainty of the proof is dependent upon the character of the proceeding. Why should greater certainty be required as to proof of the amount of damages than in respect to any other part of a case? All that can be expected in any case is that the relevant facts tending to show the extent of the damages be placed before the jury to enable it to make such an intelligent estimate of the same as the circumstances of the case will admit."

City of Kennett v. Katz Const. Co., 273 Mo. 279, 202 S.W. 558, 562, (1918).

See also General Finance Corp. v. Dillon, 172 F.2d 924, 930 (10th Cir., 1949);

Kaiser v. Amalgamated Clothing Works, 169 Va. 574, 194 S.E. 727 (1938);  
25 C.J.S. Damages, § 28.

The authorities cited by the Court in its Opinion to the effect that damages must be proved with reasonable certainty and specificity for the most part pertain to values of real or personal property sold or exchanged. It is submitted that while the principle cited by the Court is applicable to that type of case, the rule of damages cited therein is ill-suited to the case involving the "sale" or "exchange" of advice and personal services which cannot be precisely valued in terms of dollars and cents. The Supreme Court recognized this principle in S. E. C. v. Capital Gains Bureau, 375 U.S. 180 (1963), and that ruling was applied by our Court of Appeals in Español v. Berlitz School of Languages, 127 U.S. App. D.C. 293, 383 F.2d 220 (1967). In the latter case, the trial court entered judgment n. o. v. for defendant in a suit for breach of contract brought by an instructor against the Berlitz Schools. The trial court rested its conclusion on the stated ground that there was insufficient evidence upon which the jury could ascertain the damages sustained by the plaintiff. In reversing the trial court decision, Judge Danaher declared that a contract suit involving personal services cannot be successfully defended merely because the damages suffered are difficult of ascertainment. The Court then quoted a portion of the Supreme Court's opinion in Story Parchment Co. v. Patterson Parchment Paper Co., 282 U.S. 555, 563 (1931) as follows:

" Where the tort itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts. In such case, while the damages may not be determined by

mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. The wrongdoer is not entitled to complain that they cannot be measured with the exactness and precision that would be possible if the case, which he alone is responsible for making, were otherwise."

The Court has recognized that the negotiations leading up to, and the creation of, the Wilson trusteeship were unique matters. Under these circumstances it is difficult at best and perhaps impossible for the plaintiff to place a precise monetary value upon his services in accomplishing the desires of the Swiss. Plaintiff submits that the Court, having already found that he is entitled to damages, should apply a liberal rule with respect to determining the amount of those damages. The language of the Court in Wenzler & Ward Plumbing & Heating Co. v. Sellen, 53 Wash. 2d 96, 330 P.2d 1068, 1070 (1958), is noteworthy.

"Therefore, when it is clearly apparent that the plaintiff has sustained actual damage from the defendant's wrong, a liberal rule is applied with respect to determining the amount of that damage. Moreover, where proof of actual damage to the plaintiff is available, uncertainty as to the exact amount thereof cannot deny to the plaintiff a right to recover any compensation at all". (Quoted with approval from 14 Cal. Jur. 2d 690, § 65.)

D. Interhandel has been Unjustly Enriched at Plaintiff's Expense by Receiving the Benefit of his Services without Adequately Compensating him.

1. The Measure of Recovery is the Benefit Received by Interhandel.

On a claim of unjust enrichment the claimant must, of course, not only show that the other party has received a benefit but also that it has been at the expense of the claimant. Lawrence Warehouse Co. v. Twohig, 224 F.2d 493 (8th Cir. 1955); Herrmann v. Gleason, 126 F.2d 936 (6th Cir.



1942) The evidence presented in this case meets both of the criteria for a recovery on a theory of unjust enrichment. The benefit to the defendant need not be purely and simply a monetary benefit but it more properly can be described as an "advantage". The Supreme Court of Pennsylvania pointed this out in Meehan v. Cheltenham Township, 410 Pa. 446, 189 A.2d 593 (1963), wherein it was stated that the measure of recovery under the doctrine of unjust enrichment was not plaintiff's loss, but rather the benefit which defendant had received from plaintiff's services. To the same effect is Lawrence Warehouse Co. v. Twohig, supra, 224 F.2d at 498, and Herrmann v. Gleason, 126 F.2d 936 (6th Cir. 1942)

2. Interhandel was Benefitted Greatly by Plaintiff's Services in Obtaining the Wilson Trusteeship for It.

Plaintiff submits that the idea of creating the Wilson trusteeship and his implementation of that idea with the resolute backing and encouragement of the Swiss, conferred upon the latter a substantial advantage in terms of their dealings with the United States Government, with their own stockholders and with the financial community.

Reference has already been made to the value which the Swiss themselves placed upon the trusteeship, supra, page 8. Perhaps the greatest advantage however, was the ability to open negotiations directly with the United States Government, looking toward a resolution of the longstanding GAF controversy, which possessed for the first time a character of trust and confidence. While the Court has declared in its Opinion at pages 7 and 8 that it would be pure speculation to hold that the trustee and his attorney could have negotiated a disposition of the matter at least equal to that which came about

as the result of the intervention of Dr. Schaefer, the fact remains that within a very short period of time and while the trusteeship was still in effect, Dr. Schaefer and the Attorney General were able to reach an agreement in principle regarding the settlement of the controversy. (Tr. 1423-25; Pl. Ex. Nos. 202, 204, 206) Since all previous efforts to negotiate with the United States Government in this matter had failed completely and since a new administration completely unfamiliar with the background of this long drawn out litigation had come to power, it is clear beyond a peradventure that the trusteeship enabled the prompt settlement of the litigation.

In evaluating plaintiff's claim for compensation on the basis of unjust enrichment, the Court should consider the following language from Professor Corbin's treatise on Contracts:

" The availability of the remedy of restitution is not restricted to cases in which the defendant has been guilty of a breach of contract ... Unjust enrichment, therefore, may be a sufficient reason for granting the quasi-contractual remedy of restitution, even though the granting of that remedy is not restricted to cases of unjust enrichment. If this is true in cases where the defendant has committed no wrongful act, it shall be true, a fortiori, if the defendant has been guilty of a breach of contract or other wrong."

5 Corbin Contracts, § 1107 (1964 ed.)

That the unjust enrichment theory applies in the District of Columbia is made clear in Rosenkoff v. Finkelstein, 90 U.S. App. D.C. 263, 195 F.2d 203 (1952) and in Roebling v. Dillon, 109 U.S. App. D.C. 402, 288 F.2d 386, cert. denied, 366 U.S. 918 (1961).

E. The Difficulty in Computing Plaintiff's Damages in this Case has been Caused by Defendant's Wrongful Conduct.

The testimony of the plaintiff and of the trustee established that the plaintiff's problems in securing compensation for his services flow from defendant's violation of the trusteeship agreement. Had the trustee been allowed to continue his endeavor to secure a most favorable settlement for the Swiss in accordance with the irrevocable provisions of the powers, plaintiff would have received his compensation from the trustee out of the proceeds of the settlement and the instant suit never would have been filed. The authorities are unanimous that a defendant whose wrongful conduct has rendered difficult the ascertainment of the precise damages suffered by the plaintiff is not entitled to complain that these damages cannot be measured with the same exactness and precision as would otherwise be possible. See, e.g., Bigelow v. RKO Radio Pictures, Inc., 327 U.S. 251 (1946); Hartley & Parker, Inc. v. Florida Beverage Corp., 307 F.2d 916 (5th Cir. 1962); Stepovich v. Kupoff, 261 F.2d 693 (9th Cir. 1958). The principle finds expression in the following statement by Judge Vann speaking for the Court in Mooney v. Byrne, 163 N.Y. 86, 57 N.E. 163, 165 (1900):

" Guided by the cardinal principle that the wrongdoer shall make nothing from his wrong, equity so moulds and applies its plastic remedies as to force from him the most complete restitution which his wrongful act will permit".

Accordingly, it is submitted that the record as it now stands contains the best evidence as to the value of plaintiff's services and the Court should undertake to award the plaintiff such sum as it reasonably believes will compensate him for his exceptional and unusual services.

## III

ALTERNATIVELY, PLAINTIFF REQUESTS THE COURT TO REOPEN THE JUDGMENT AND TO PERMIT HIM TO ADDUCE CERTAIN ADDITIONAL TESTIMONY WHICH MAY ASSIST THE COURT IN PLACING A VALUE ON HIS SERVICES

While plaintiff believes that there is ample evidence in the trial record to enable the Court to assess the damages to which he is entitled, it may be that the Court will wish to hear certain additional testimony on the question of the value of plaintiff's services. Attached hereto as Exhibit "B" is the affidavit of Charles T. Wilson which would indicate certain additional matters as to which he could testify if afforded the opportunity to do so. Plaintiff expects to obtain expert testimony from the financial community in New York City bearing on this issue. Accordingly, if the Court is not satisfied with the state of the record on the question of the value of plaintiff's services, plaintiff respectfully requests the Court to reopen the judgment to enable the plaintiff to adduce additional testimony by the trustee and by certain experts in the field of industry and finance.

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May 19, 1964



## Washington Merry-Go-Round

DREW PEARSON

### Washington

Two heart-rending legal proceedings which have some bearing on each other are taking place in opposite parts of the world today. One is in Frankfurt, Germany, where the Nazi killers of Auschwitz are on trial; the other in Washington, D. C., where the war-won property of I. G. Farben is being disposed of.

In Frankfurt, gruesome testimony tells of special rations of liquor and cigars for Nazis who performed extra work in killing Jewish prisoners. A Polish doctor who served as a clerk at Auschwitz told of keeping the records of 120,000 male inmates killed.

In Washington, in the other court proceeding, Attorney General Kennedy has authorized the sale of General Aniline and Film, the very valuable property once owned by I. G. Farben, back, in part, to the Swiss company which served as the dummy for I. G. Farben.

It was, of course, I. G. Farben which used the Auschwitz slave labor.

Despite this, and despite the fact that every other U. S. Attorney General has refused to return any of I. G. Farben's property, Bobby Kennedy has now completed a deal whereby \$60,000,000 will revert to Interhandel.

The big mystery is—why? Perhaps Sen. Keating (R-N.Y.), a member of the Senate Judiciary Committee with a good record on religious fairness, should investigate.

\* \* \*

Meanwhile, a side court action which sheds some light on the dickering over I. G. Farben's property in the U. S., has been filed in the U. S. District Court in Washington. It's a petition to get a slice of the profit from the sale of General Aniline & Film, filed by Robert A. Schmitz, an American whose uncle, Herman Schmitz, was convicted as a war criminal for building the I. G. Farben plant alongside Auschwitz in order to use Jewish slave labor. Robert Schmitz's father,

Detrick, was the head of General Aniline, I. G. Farben's property in the U. S.

He now claims a 5 per cent commission for helping arrange the sale of General Aniline stock and tells an interesting story about the scramble to get hold of this valuable property. Between 1947 and 1953, Schmitz says, he was successively authorized to act as agent for Remington Rand, headed by the late Gen. Douglas MacArthur; the Atlas Corporation, headed by financier Floyd Olin; Shields and Co.; W. R. Grace and Co.; Food Machinery and Chemical, all anxious to obtain this valuable property.

Schmitz also tells how in December, 1953, it was decided to pick an important American to negotiate with the U. S. government—namely Charles E. Wilson, former president of General Electric, who had served as chairman of the War Production Board and was president of Ike's People-to-People Foundation.

\* \* \*

Wilson served without pay, according to Schmitz, because he believed in Interhandel and looked upon the confiscation of I. G. Farben's property as against U. S. interests—also illegal and immoral.

In the summer of 1961, Robert F. Kennedy had become Attorney General and appeared to reverse the policies of all previous Attorneys General that the General Aniline and Film property should not be sold back to any organization having ties with I. G. Farben. Previous Attorneys General had consistently ruled that Interhandel was a cloaking operation for I. G. Farben.

When Bobby Kennedy took over, the help of Charles E. Wilson was no longer considered necessary. Interhandel felt confident that with Kennedy running the Justice Dept. it would be able to obtain the property which other Attorneys General, both Republican and Democratic, had refused to relinquish.

So Wilson was given the hint to bow out. He did so in November, 1962.

[Caption Omitted in Printing]

AFFIDAVIT OF CHARLES E. WILSON

STATE OF NEW YORK                    )  
COUNTY OF WESTCHESTER        } ss:

Personally appeared CHARLES E. WILSON, of 7 Hampton Road, Town of Scarsdale, WESTCHESTER COUNTY, NEW YORK, before me, who, being first duly sworn, deposes and says that:

On May 23, 1960, I accepted all of the duties and imperative mandates to act as sole Trustee under Powers in Trust for SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S.A., also known as INTERHANDEL.

I became Trustee under the Resolutions and Powers conferred upon me by the above INTERHANDEL, made part of one another, as ratified on April 28, 1960, at the office of UNION BANK of SWITZERLAND, ZURICH, SWITZERLAND, and which I accepted and acted upon, and which Resolutions coupled to my Powers expressed the intentions of the parties.,

Thereupder, I was required by Interhandel to settle their action against the Attorney General of the United States, and solely to conclude any and all negotiations related to all of the property and business of Interhandel in the United States of America the subject matter of this action, and to convey their property to American purchasers with clear title.



I was required to discharge all claims and all liens outstanding, and that would include the equitable lien of Robert A. Schmitz of which I had knowledge. With that knowledge, and in order to carry out my mandate also consistent with the added express oral understandings arrived at with Interhandel at Paris, France, on April 30, 1960, the fixation of fees including the fee of Mr. Robert A. Schmitz was in my sole discretion under my Powers in Trust. Ever since that point in time it has been and remains my firm judgment that the reasonable value of the said services of Mr. Robert A. Schmitz was not less than five percent (5%) of the sums recovered by Interhandel under the settlement, and I would have paid Mr. Schmitz not less than five percent out of the sums recovered as part of my obligation. Paragraphs 23 and 24 of the Resolutions part of my Powers are expressive of the intentions of Interhandel for me to effectively execute, and Paragraphs 2, 4, 5, and 6 of my specific Powers in Trust confirm my obligation.

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DEFENDANT'S MEMORANDUM IN OPPOSITION  
TO PLAINTIFF'S MOTION FOR RECONSIDERATION OR,  
ALTERNATIVELY, TO OPEN THE JUDGMENT  
AND TAKE ADDITIONAL TESTIMONY

---

This opposition is addressed to plaintiff's "Additional Points and Authorities," since it embraces all that was stated in plaintiff's motion.

The first two sections are but a reiteration of what plaintiff's counsel set forth in their proposed findings and as they argued orally to the Court. Authorities cited are either to the same effect as those earlier presented, or are inapposite to the facts of the case at bar.

These first two sections merely ask the Court to change its mind, and to overrule its carefully-considered opinion based upon the totality of the evidence. This is plainly an unreasonable request, since nothing new is presented.

A motion under Rule 59(a) F.R.Civ.P. must establish, according to Barron & Holtzoff Federal Practice and Procedure, (Wright, Rules Edition), Vol. 3, §1303:

"....manifest error of law or mistake of fact, and a judgment should not be set aside except for substantial reasons."  
(at pp. 356-357).

Plaintiff clearly is not meeting this test.

The third point - that the judgment be opened to permit plaintiff to adduce "certain additional testimony" - is not worthy of judicial consideration since on its face it is not even a serious effort to persuade the Court that evidence exists which the Court found was missing at the trial.

An affidavit by Mr. Charles Wilson is tendered and, in addition, counsel states that "[P]laintiff expects to obtain expert testimony from the financial community in New York City bearing on this issue [value of plaintiff's services]." (Underscoring supplied.)

Referring first to the latter statement, not made under oath but merely included in the "Points and Authorities," this expectation by plaintiff does not even take the trouble to tell the Court of what the "expert testimony" will consist. The most that is stated is that it will bear upon the value of plaintiff's services. Plaintiff has had about one month in which to develop such evidence - if in fact he could obtain it - and yet he fails to identify a witness or to describe the proposed testimony. Judgments would never be final if such representation could be the basis for re-opening a case.

Turning to Mr. Charles Wilson's affidavit, the relevant parts of it are an incredible document in the face of the case which plaintiff undertook to prove at the trial. The relevant parts to which we refer are twofold, as follows:

- (1) That the fixing of the amount of plaintiff's "fees" was in affiant's sole discretion.
- (2) That it was affiant's "firm judgment" from April 30, 1960 "that the reasonable value of the said services ..... was not less than five percent (5%) of the sums recovered"; and that affiant would have paid plaintiff not less than 5%. (Underscoring supplied.)

Let us turn back to page 7 of the "Additional Points and Authorities" where, near the bottom of the page, the following appears:

"Testimony was presented at trial that the trustee had been advised that plaintiff had an agreement with the Swiss whereby they would pay him 5% of the settlement (Tr. 1023) sic [1223] even though the trustee did not then recall where or under what circumstances the money was to be paid." (Underscoring supplied.)

Is the Wilson affidavit offered to support the existence of newly discovered evidence? Hardly! Plaintiff does not use the term, but suggests that affiant did not recall at the trial that which he now swears to. But the affiant does not swear and could not truthfully swear that he did not recall, at the trial, that which he now states in his affidavit has always been clear in his mind.

We heard not one word at the trial that Mr. Wilson had the "sole discretion" to fix the amount of plaintiff's "fee." All of plaintiff's theories were contrary to such an idea. Moreover, according to the affidavit, it has always been affiant's "firm judgment" that the reasonable value of plaintiff's services was 5%. If this was always his firm judgment, it is not newly discovered, nor did he testify to that effect at the trial.

We are confronted with a newly "discovered" theory, not evidence!

The Court will also note that the affiant does not define "the said services," nor could he define plaintiff's services at the trial (See Tr. 1219-23). Were the services ones which encompassed October, 1959 - May, 1960, or December, 1958 - May, 1960, as mentioned on pages 4-5 of the "Additional Points and Authorities"; or for procuring affiant to act as "trustee"; or those rendered during the period June, 1960 - December, 1961; or extend-

ing into 1962 until affiant resigned? The Court will recall that Mr. Wilson rejected out of hand, on cross-examination, that plaintiff's fee was tied merely to procuring affiant to undertake the "trusteeship," Tr. 1223-4. Thus, Mr. Wilson cannot be treating plaintiff's compensation as a finder's fee.

In the abandoned second count of his complaint, plaintiff fixed the reasonable value of his services up to December, 1961, at \$150,000. True, this count was withdrawn, perhaps for tactical reasons, but it was a figure which he perpetuated throughout three successive complaints filed in this Court.

Now, Mr. Wilson swears for the first time that in his "firm judgment," which was formed on April 30, 1960, the reasonable value of plaintiff's "said services" was 5% of \$145,000,000, or \$7,250,000. We wonder whether Mr. Wilson realizes that for a maximum period extending from December, 1958 to November, 1962 - about four years, he is allocating to plaintiff an annual income rate of \$1,812,500, while during that same era a \$200,000 annual salary for the President of General Electric Company would take over 36 years to aggregate \$7,250,000.

Harsh words could be used to describe plaintiff's effort to reopen this case. Instead, defendant submits that the effort is frivolous, amounting to trifling not only with this Court, but with a "final judgment."

Judge Keech's remarks in Rue v. Feuz Construction Co. (1952) 103 F. Supp. 499, are particularly in point in the case at bar. We take the liberty to quote him in extenso from page 502, as follows:

"As to ground 5: The principal contention of counsel for the garnishee is that the reopening of this case is within the discretion of the trial court, that such discretion should be exercised upon a substantial showing that an unjust and incorrect judgment is about to be entered, and that the three affidavits make such a showing.

"There is nothing to indicate that any of the parties whose testimony the garnishee now seeks to present to the court were at the time of the trial in any wise incapable of appearing or beyond the reach of the garnishee. Indeed, the parties from whom additional evidence would be elicited are persons who are and have been readily available to the garnishee.

"There is no contention - as there cannot be - that the additional evidence is newly discovered.

"The garnishee's motion coming at this time and on the state of this record is, in effect, a motion for a new trial on the ground that an attorney who tries his case largely on one theory, without producing evidence then available to meet the other issues raised at the trial, should be permitted, after the court renders judgment against him, to reopen the case in order to put in his defense to those issues which at the trial he deemed unworthy of refutation.

"[2-5] The court concedes that under Rule 59(a) the court has discretion to reopen a case on a motion for new trial for the taking of additional testimony. However, such discretion should be exercised only where the circumstances show justification for departure from the usual procedure. It is the view of this court that failure of a party to call available witnesses to meet issues raised at the trial, does not constitute justification for reopening a case after determination by the court. Public policy and the court calendar are such as not to permit a party litigant to gamble on reliance on one theory at the trial and, after a contrary view of the evidence is adopted by the



court and is to be followed in its judgment on the facts of record, to seek to reopen the case to meet the other issues raised by that record, in an attempt to make for a finding in its favor on the theory adopted by the court.

"As to counsel's argument that the court should exercise its discretion to reopen the case upon a substantial showing that an incorrect and unjust judgment is about to be entered, the affidavits now offered by the garnishee do not make a substantial showing that a different judgment would be rendered if the case were reopened for presentation of the facts contained in them."

The whole attempt here is specious, and should be so treated. Plaintiff's motion should be denied in its entirety.

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O R D E R

After the court entered judgment for the defendant pursuant to its Findings of Fact and Conclusions of Law, plaintiff filed a Motion for Reconsideration or, Alternatively, to Open the Judgment and Take Additional Testimony.

After thorough consideration of plaintiff's Points and Authorities, and after oral argument, the court is of the opinion that plaintiff has failed to demonstrate either manifest error of fact or law or to establish any other facts which entitle plaintiff to a complete or partial new trial.

Therefore, it is

ORDERED that plaintiff's Motion for Reconsideration  
or, Alternatively, to Open the Judgment and Take Additional Testimony,  
be and hereby is, denied.

JUDGE McCLELLAN

---

JUDGE

June 30, 1970

---

United States District Court for the District of Columbia

FILE COPY

FILE COPY

Robert A. Schmitz .

*Plaintiff.*

vs.

Civil No. 85-67

Societe Internationale, etc.

*Defendant.*

NOTICE OF APPEAL

Notice is hereby given this                      day of        July                      , 19 70 , that  
Plaintiff

hereby appeals to the United States Court of Appeals for the District of Columbia from the  
judgment of this Court entered on the    15th        day of        May                      , 19 70  
in favor of    Defendant

against said plaintiff, and also from the Order Denying Plaintiff's Motion for  
Reconsideration or, Alternatively, to Open the Judgment and Take Additional  
Testimony, said Order having been entered on July 1, 1970.

Attorney for Plaintiff

740 - 15th Street, N.W.

Washington, D.C. 20005

Counsel for Defendant:

John J. Wilson, Esq.

815 - 15th Street, N.W.

Washington, D.C. 20005

Defendant.

Monday, January 5, 1970.

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Defendant's Copy

MARIE S. TAYLOR  
Official Court Reporter  
Room 4419 - U.S. Court House  
Washington, D. C.

P R O C E E D I N G S

\* \* \*

3 THE COURT: Call the case.

THE CLERK: Civil Action 85-67, Robert A. Schmitz  
versus Societe Internationale.

\* \* \*

THE COURT: Counsel have signed precipe withdrawing  
demand for a jury trial, which the Court has approved and is  
now filing with the Clerk.

MR. O'DONOGHUE: Your Honor, as I stated in Chambers,  
but I think I better state for the record, we would like to  
withdraw the Second Count of the Complaint and proceed on the  
First. I don't know whether we are absolutely entitled to  
withdraw it, but in any event, I want to apprise your Honor  
and the defendant that we don't intend to proceed on that count.

THE COURT: Do you want to respond to that, Mr. Wilson?

MR. WILSON: Your Honor, only as I did in Chambers:  
4 That strange as it may seem, we oppose the withdrawal of  
the Count.

THE COURT: I think the position of both parties  
is well stated on the record. Counsel need not do anything  
further.

\* \* \*

THE COURT: Mr. O'DONOGHUE, you may call your first witness.

MR. O'DONOGHUE: Mr. John Wilson, please.  
Thereupon,

JOHN J. WILSON

was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

5

DIRECT EXAMINATION

BY MR. O'DONOGHUE:

Q State your name and address please.

A John J. Wilson, Office address, 815 - 15th Street, Northwest. My residence is 2737 Devonshire Place, Northwest, Washington, D. C.

Q You are an attorney practicing primarily in the District of Columbia, are you not?

A I am, sir, almost exclusively in the District of Columbia.

Q For How long?

A Have been for 47 years.

Q Thank you. Among your clients has been the defendant in this case, which is generally referred to as Interhandel?

A Yes, Mr. O'Donoghue.



Q If we use that term throughout, I suppose we will all know precisely what is meant by it. It's hardly ever called by any other name, is that correct?

A I agree with you, except there was a period of time when it was abbreviated to "I.G. Chemie" and it's possible that I might say that because I was used to that name for a number of years. But these are interchangeable terms, and they are abbreviations of the long French and German names.

Q When did you first represent Interhandel?

6 A I was employed by the corporation about the first of October 1941, three months before Pearl Harbor.

Q What did Interhandel consist of at that time? What was the nature of this defendant?

A It was essentially a holding corporation which held 90-some percent of the stock of General Aniline & Film Corporation, a Delaware Corporation with offices in New York City, and it had a variety of other investments; but I would say, in round figures, that the General Aniline investment represented 85 percent, or maybe 81 percent of the portfolio of Interhandel.

Q Interhandel was a Swiss corporation, was it not?

A It was a Swiss corporation, and as its name implied, it had international aspects, that is, its investments were not limited to Switzerland.

Q Was it qualified to do business in any of the United States?

A Not to my knowledge.

Q What was the business of G.A.F. or General Aniline & Film?

A General Aniline & Film had three major divisions: It had a chemical-dyestuffs division; it had a graphic division, which is known as Ansco -- and that's how the public happened to know General Aniline, because they did not know General Aniline through the chemical-dyestuffs business. This was done on an industrial basis, you might say. And there was a third, smaller section, a subdivision of the business which was a reproduction of copies known as the OZALID DIVISION. This was a very small part of the business.

Q Did it have some other chemical business besides the dye?

A Oh, I would say that -- My recollection, and I am not a chemist, but I would think that the principal use of the chemicals was in relation to dyes.

Q I see. I understand that a vesting order was issued seizing the G.A.F. stock of Interhandel on February 16, 1942, is that correct?

A That is correct. It was served on me by members of the Secret Service, and it was served upon a Swiss-American

named Werner Gabler, who was an economist and who had represented the Swiss I. G. Chemie in those days in this country for some year-and-a-half, I believe, before I came into it. He was not a lawyer, but I do remember that memorable date when the Secret Service handed me a copy of the Vesting Order, and I think they handed Gabler a copy of the Vesting Order.

Q When you first came to represent Interhandel, Detrick Schmitz was not still president of the General Aniline & Film, was he?

8 A I think he had been deposed by that time, because, if you will permit me, I remember -- and you will remember -- that war seemed imminent for a year or so before it occurred; and the Treasury Department, the Foreign Funds Control, was very active in areas which were German-suspect; and General Aniline was one of those. And the Treasury Department moved agents into General Aniline sometime earlier than when I came into the case, I believe before Pearl Harbor and I think Mr. D. A. Schmitz had been "pushed out," let's put it that way, by people who were selected by the Treasury Department to run General Aniline.

Q In other words, he was not pushed out by Interhandel?

A Not at all. We admired him tremendously.

Q Why, because of the job he was doing?

A I liked him personally, and I thought he was a forthright individual, and he knew what he was doing.

Q What was the basis for the vesting by the United States?

A On the surface, the Vesting Order alleged that Interhandel was a foreign national, which was adequate under the regulations issued under the Trading with the Enemy Act at that time; but it wasn't very long before it became known to me that the Government was charging that I. G. Chemie was enemy national.

Now, mind you -- and I'm sure you know this -- the corporation, General Aniline was not bodily seized, per se, but the stock ownership by I. G. Chemie in the corporation was seized, and this being control of the corporation, overwhelming control, the Government moved in by virtue of that position.

Q Well, so far as the original seizure is concerned, it was not because it was other than a Swiss property, is that correct?

A Oh, I think you might say that was nominally so under Vesting Order Number 5, which I think was the Vesting Order, which you can see was up at the top of the list, but in no time, there came through one or twenty additional Vesting Orders which made it quite plain that the theory of the Government was it was German controlled.

Q So, that was made officially clear early on---

A Oh, yes, if I remember it correctly -- and I haven't

looked at it for years -- the number of the Vesting Order was 907.

Q During the course of the war, was any effort made by you or was any effort made of which you were aware, to lift the Vesting Order or have it returned to the Swiss owners?

A No. I will tell you what did happen, Mr. O'Donoghue. The Vesting Order has been interpreted--- This Vesting Order and all Vesting Orders under the Alien Property Law, Trading With the Enemy Act, was to have been construed to vest the properties, the fee simple title to the property, in the United States Government. So, I never did entertain any  
10 thought that the technical vesting was not a legal vesting of ownership for at least-- at least in the interim, in the United States Government.

Very soon after Pearl Harbor, the Treasury issued a series of regulations, one of which limited my communication with my clients to only licensed communications, and the other required any agent of a company which was on the Black List -- and this Black List is a typical figment of the British in time of war; it was not originated in this war -- and I. G. Chemie was on the Black List. And Gabler and I both obtained Treasury licenses for the purpose of representing I. G. Chemie in this country.

We did not -- We could not get a blanket license

to communicate, and indeed this was very sparingly issued.

Now, about May of 1942 Gabler was drafted. He was of war age. I was a little older, and he ceased from then on to have any official connection with the case. I would see him from time to time. He was stationed down at Petersburg, and we would talk about what the developments were. But answering you directly, the main function that I performed during the war was to keep from "rocking the boat" because without the pendency of a suit, the Government could have sold General Analine, and we did not want that to occur; and I did not want to file a suit until I had talked to my clients about the case, none of whom I had ever physically seen. So, the result was that I simply kept in contact with Government officials who were involved in the transaction.

At the time I came into it, the Secretary of the Treasury, who was the one who issued the Vesting Order, he had jurisdiction. Then, I think there was set up as a sub-department of the White House, an Office of Alien Property, and it was in charge, I think, of a man named Markham, and he had an assistant, named Frank MacNamara, and I would go visit them and just determine for myself, by guess-work, that everything was remaining in the status quo.



Fortunately, I think the Government depended on the dyestuffs of General Analine to dye the khaki of our fighting men, and therefore, it was advantageous not to dispose of the property.

Then, the Alien Property Office went into a Division of the Department of Justice under an Assistant Attorney General. But I can't embellish very much on my activities. They were watch-dog activities with little or no communication with our client.

Q Now, the war finally ended.

A Yes.

12

Q What was your initial effort?

A My initial effort was to get a passport to go to Switzerland.

Q You succeeded?

A I eventually did, but Chemie was still on the Black List, and dear Mrs. Shipley -- and I love her for that and a lot of other things -- she would not let me have a permit. And Judge Vinson, whom you knew as well as I did, was then Secretary of the Treasury, which had control of the Black List.

I would say that I began this activity in the first part of the year, 1946, after the war was completely over in both theatres.

And Judge Vinson, I remember his telling me that there was an Executive Agreement under consideration by the two governments, and that as soon as that was signed, I could have my passport. And I never will forget the generous attitude of Judge Vinson. He called me up at 9 o'clock Monday morning, and said "This treaty has been signed on Sunday," and said, "I have just called Mrs. Shipley. You can have your passport." I got to Switzerland.

Q When was this?

13 A The Washington Accord was signed on May 26, 1946 and I went to Switzerland after several abortive attempts--- We don't realize now that the plane travel was practically nil after the war, and after making several efforts, I went over in September and met these folks for the first time. I spent six weeks in Switzerland -- six weeks abroad, of which over three weeks were in Switzerland. I met Dr. Iselin, the President, a fine lawyer, and a patriarch. I met Dr. Hans Sturzenegger, who was the largest stockholder at that time in what we called "I. G. Chemie."

The transition had taken place, and Mr. Robert Schmitz's uncle, Mr. Albert Gadow, who had been General Manager of I. G. Chemie during the war years, withdrew and a man named Walter Germann, who had a relationship to the Sturzenegger partnership -- Sturzenegger had a private

bank. Walter Germann was elected manager, and my dealings then began to be intensively with Walter Germann, who liked to travel better than I did, and who came over here "at the drop of a hat."

Q Did Dr. Sturzenegger have a controlling interest in Interhandel?

A I would say, for all practical purposes, yes, Mr. O'Donoghue. This was a tremendous complex. There were a number of corporations clustered in the ownership of the Interhandel shares. Interhandel shares were of two classes: there were common shares and there were preferred shares. Preferred Shares were cheap. The Sturzenegger firm had gone into all of those, and there were about four times as many as the Common shares, and they voted equally with the Common shares, so the result was--- And there were subsidiary corporations, and they had the cutest names. One was Rigidor.

Q Well, if I may say so, I think that is not entirely responsive to the question.

A How did I not respond? because I want to respond.

Q I asked you if Dr. Sturzenegger had the controlling interest?

A Through these various clusters of corporations with options running back and forth -- the most complex thing

you ever could dream of in your life. He had been the dominating factor of stock control.

Q Did you make any application to the United States Government for the return of the G.A. F. stock after the war and prior to filing suit?

A We did. It was a prerequisite under Section 9(A) of the Trading With the Enemy Act that you had to file a claim. You did not have to wait for its rejection, but you had to file a claim.

Q Was action taken?

A This was a tremendously complex--- I would say we were a year working on that claim.

Q When was the claim filed?

15 A Oh, I would only guess it was filed sometime in '47, and we filed it both with the State Department--- I know, the Swiss Minister(at that time he was a Minister, not an ambassador)-- he delivered one copy to the State Department on the diplomatic level at the request of the Swiss Foreign Office, and I delivered the other to the Department of Justice which was then controlling alien property.

Q Was any action taken on the claim?

A The claim was never rejected, as I recall it, and we filed suit in October of 1948.

Q --asking for the return?

A Indeed for the return of that and cash that had been vested, a couple of million dollars worth of cash had

been vested in various banks, held to the credit of either I.G. Chemie or one of I.G. Chemi's subsidiaries.

Q And the theory of the request was that G.A.F. was not enemy-owned, but was Swiss-owned?

A Absolutely.

Q Was any other attempt, other than the filing of that suit made? Was any request made for arbitration of the Washington Accord?

A Yes. Two things were occurring: The Washington Accord proceeding was one which was conducted in Switzerland under a commission. That was going on and that had the effect of exonerating I. G. Chemie from the charge of German control. This was by us thought to be a great victory and a vehicle which would result in the release of the General Analine stock by the U. S. Government. However, the American Government did not view it similarly, and there was a very high-level diplomatic demarche in which the result of the Washington Accord was relied upon in which an arbitration treaty between the United States and Switzerland was relied upon, and this, I think it is fair to say, if I remember correctly, was rejected by the United States Government.

Q It was rejected on the theory that this was not a matter to be taken cognizance of under the provisions of

the Treaty, but was rather a domestic matter to be determined by the United States unilaterally?

A Yes, that's my recollection of it, yes.

Q Aside from this attempt to obtain arbitration, was an action filed in the World Court?

A Yes, but this was later on.

Q When was that?

A This was sometime in the fifties. If you want to hear a couple of steps here: As soon as we filed a suit, a Notice was served on me for the taking of Dr. Sturzenegger's deposition in the United States, on the theory that he was an agent of I. G. Chemie. We opposed that upon the ground that we preferred to have it taken in Switzerland. We did not succeed. So, in early February of 1943, the Government started to take Dr. Sturzenegger's deposition, and it was quite evident they had a number of documents which we had never seen, and so we moved for Discovery of Documents in the hands of the Government, and the Government cross-moved for Discovery of our documents in Switzerland.

All of this took months, and Dr. Sturzenegger's--- We were permitted to have the first inspection. The Government tried to get the first inspection, but we got it. And I can't tell you how many thousands of documents we examined. I know I had a crew of about five people --

translators, typists -- going over these documents, and I was giving my full time to the matter.

I can't precisely account for all the time in '43, but I know that Dr. Sturzenegger's deposition was resumed in January of the following year.

Q Excuse me---

A I meant to say '53.

Q Excuse me for interrupting, but I didn't want every detail of the litigation. It is true, however, that---

A Well, may I tell you something?

Q Yes, surely.

A As I said one time in one hearing, when my opponents, the Department of Justice were--- I was talking about Interhandel and I said, "I'm speaking about the woman I love." My opponent reached across the table and said, "Not the woman you love, the woman who is supporting you." This is their reply. So, when you get me on the subject of Interhandel, Mr. O'Donoghue, you have to be slightly tolerant.

Q I thought you were going to say just the opposite, that I should make every effort to cut you off when you got beyond what I needed.

A You never suspected that where I'm concerned. You've known me too long.

Q Well, the case--- At one stage of the game,



or at what stage, let me say, period of time, the case was dismissed for failure of the plaintiff to supply documents

A Yes. I'm way off on my numerology. Bear with me while I get this straightened out. I spoke of '51 and '52. Dr. Sturzenegger's deposition was resumed in January of '50, just 20 years ago, because that's the first time I met Dr. Ulrich Wehrli, and he was on the stand for nearly six months. We had 6600 pages.

\* \* \*

Q I hope that's not an inspiration to you.

19 A Well, I won't run that much of a bill up. So, after his deposition was completed, the Department of Justice boys went to Switzerland to inspect our records, and they wanted to inspect--- They had an Order from Judge Lawes to inspect the records of the Sturzenegger bank as well as the records of I. G. Chemie, and the banking secrecy of Switzerland interfered. The Attorney General made a formal seizure of the Sturzenegger records, and would not let us have them to show to the Government. So, when they came back to the States in the late part of '50, they moved to dismiss for failure to comply with the Discovery Order, and this consumed years.

Q Yes. Then the Motion to Dismiss was ultimately granted, was it not, by the District Court?

A It was and we took an appeal and the Court of Appeals affirmed it 2 to 1, as I recall it. Maybe it was--- I don't know. It could have been unanimous. I forget which.

Anyway, I remember one judge --- maybe the whole court --- wanted to give us further time to try to produce the records.

Q You were given that time, weren't you?

A Yes, and we did produce 250,000 documents. And then --- we're getting now into 1956. We applied for Certiorari, Certiorari was denied, and at that point, the Swiss Government went into the World Court.

I continued on before Judge Lawes, who had never really issued a final Order of Dismissal. So when he did it, I took a second appeal. And with the cooperation of the Department of Justice, we attached the record of the first appeal and the second appeal, and this time we got Certiorari.

Certiorari was granted by the Supreme Court, I would guess in September of 1957, and almost at the same time, the World Court came down with an opinion -- and I am vague about this -- but my recollection is that it said that this was a domestic matter and that domestic remedies had not been exhausted. Obviously, they had not been if Certiorari had been granted.

Q Isn't it a fact that the World Court found that it had jurisdiction, but since the remedy in the United States had not yet been exhausted, it would not exercise its jurisdiction until that---

A I think that's a fair analysis.

Q So, it found it had jurisdiction and suggested to the Swiss Government that it could return to the World Court in the event they did not get satisfaction in the courts of the United States, isn't that the---

A And Uncle Sam was skirting around the use of the Connelly Amendment.

Q The Connelly Amendment -- they interposed that as a defense?

A They waived it around. That was the Amendment that said the United States could get out of the World Court any time it wanted to, but the United States didn't want to take that position because it was asking everybody else in the world to arbitrate their differences.

\* \* \*

THE WITNESS: I concurred in that, to the best of my recollection.

BY MR. O'DONOGHUE:

Q Well, now, the case never did reach trial in the United States Courts did it?

A No. . We reversed the case in the Supreme Court in May or June of 1958. . Chronologically by this time, and from the fall of 1957, Dr. Sturzenegger had disposed of his shares except for several thousand common shares. He was off the Board of Interhandel, and the Board was reconstituted with the dominant parties being the principal officers of the three leading banks in Switzerland, the Swiss Bank Corporation, the Union Bank and Credit Suisse. So, they were in control, and Dr. Schaefer, who is in the court room, was the representative of the Union Bank of Switzerland, which is today the largest bank in Switzerland.

22

And so another important banker, named Dr. Pfenninger, who was a representative on the Board of Swiss Bank Corporation came over here, and he and I had talks with Colonel Townsend, who was then the Assistant Attorney General in Charge of Alien Property.

Q I asked you---

A We started to prepare for trial, really seriously started to prepare for trial. I had a crew of 8 people in this country; Dr. Wehrli had a crew in Europe; and we were working on trial.

We ran into a delay, however, of a year or so because a new man in the Department of Justice wanted to get rid of the Special Master, and we went all the way to the

Supreme Court on the denial of Certiorari, in the Department's effort to get rid of the Special Master.

Q When was that?

A-- That was--- Well, with the Supreme Court decision in May or June of '58, Mr. Jaffee came into the job for the Department in September of '58; and he, after a period of study, filed a Motion to Discharge the Special Master. And I would say we were a year-and-a-half fighting that all the way to the Supreme Court, which would bring us up to '59.

Q You spoke of the time when Dr. Sturzenegger disposed of his controlling interest, and I believe you said it was in 1957.

A Yes. You and I never have agreed on this date, Mr. O'Donoghue.

23 Q You don't think you could be wrong on the date, and that it could be 1959?

A No, I could not be wrong about the date.

\* \* \*

Q As of, let's say 1958, after the Supreme Court's decision, the case was sent back to the District Court, was it not?

A Yes, and the battle was resumed.

Q The battle was resumed without any immediate prospect of going to trial?

A There was a very tough, new guy against me named John Wolf, and I want to say he was a very real scrapper, and he had a crew of about 8 fighting me, and we were battling over still the production of papers.

Q Still battling over production of papers?

A Yes, indeed. And this was going on into '59 and, oh, I guess--- Let's see. No, because I was in--- This preparation for trial went on--- I was in Switzerland in '59 to confer with Dr. Schacfer, whom I had not met before that time, I think, and then we were in--- I had an associate and we were in Switzerland and Germany for sometime with Dr. Wehrli in 1961 interviewing witnesses; so we were still working on the trial of the case.

24 Q Preparation for trial?

A Yes, sir.

Q In 1960, considering that year for a moment, you have produced an enormous mass of documents for the United States Government, had you not?

A I should say over 300,000 documents.

Q And didn't they say that a large amount of time would be required for them to examine them before they would go to trial?

A I remember something like that, but I remember another thing that Mr. Jaffe called me up one day -- This

is a fine fellow, by the way.

Q Irving Jaffee?

A Irving Jaffe. He knew we had quite a team working on this case. He said, "Do you mind my quoting to a House Committee, because I want to get an appropriation, that you have 10 or a dozen people working on this case?" I said, "NO, I don't mind it." He wanted to get money to raise his crew.

Q The case was ultimately settled, was it not?

A Yes, sir.

Q And generally speaking, it involved the sale of the G.A.F. shares to what, some underwriters?

A Yes, but this is an over-simplification, to put it that way.

25 Q I realize that. What price was received at the sale?

A I think it was around 325 or 340 million dollars.

Q Think big, Mr. Wilson.

Q What was Interhandel's share of that?

A Well, I must go back and tell you about this. I can't tell you this without---

Q I just want the dollar figure.

A I understand you did. Well, all right. I'll give you the answer: We had negotiated on the basis of a



50-50 split, having no idea what the stock would bring at public sale. You see, the reason I said that you were over-simplifying the matter was that there were so many facets that had to be drawn together to settle this case,-- We had 2,000 intervenors around our cars; we had a tax claim against us of \$17-1/2 million; the Government wanted \$6-1/2 million for some of our old shares which it possessed. There were any number of important facets, every one of which had to be negotiated out. So, we reached a settlement, negotiating principally with Mr. Orrick and Mr. Katzenbach our 50-50 split.

After the tax claim which was \$17-1/2 million, and which we had vigorously disputed over the years, and had a case pending in the Tax Court involving it, and the cost of the Chemie shares of \$6-1/2 million, making a total of \$24 million, was to come off of the top before the division took place.

I was delighted with this because, of course, this meant that the Government bore half of that cost. We negotiated on that basis until the end of '63, I guess.

\* \* \*

Q I don't mind in the least. The only thing, I was only asking for an ultimate figure.

A What they did on us was to switch those figures

on us and take it out of our half, and whereas it would have been \$145 million, had we been able not to be sur-charged with the tax claim and the cost of the Chemie shares -- they took the \$24 million away from us. We got \$121 million, give or take a few dollars.

Q During this period, there were bills introduced in the Congress, were there not, for various dispositions of the matter?

A Yes. It wasn't--- I don't think it was--- The bill never named General Aniline, but it was aimed at General Aniline, because we all called it the Sale Bill. As I told you earlier, Section 9(A) of the Trading With the Enemy Act prevented a sale of seized property while a suit was pending; and the Amendment to the Act which was sponsored largely by Senator Keating, was designed to take that provision out of the law and permit a sale Pendente Lite.

Q When was that introduced?

A I would say I testified before Congressional Committees for a period of six years, off and on, prior to the time we settled the case.

Q Was it still pending at the time of settlement?

A No. One of the steps toward our settlement with Mr. Orrick was that we agreed not to oppose any further the

passage of that legislation, and that it be passed, and if there had to be a vehicle by which the stock was sold, we trusted the Government to adhere to their promise to make a deal.

We contended the law was unconstitutional, Mr. O'Donoghue.

Q In other words, you would have had to contest that, too, if it had come to a sale?

A Indeed. I have got a file with a suit going in my office attacking that.

Q Was there any other legislation introduced, was there some provision, some bill by Senator Dirksen that would have provided for the recovery of the share?

A Well, what we call Return Bills.

Q Yes.

A I think there were Return Bills.

Q And there were various ones of them pending from time to time?

A Yes, they were of a great variety. This was to apply to all Alien Property, not just to General Aniline. This was not a special bill.

Q But it would have applied to---

A Yes, we would have gotten the advantage of it.

Q Was that legislation passed?

A Yes.

Q But not until the settlement of this suit?

A It was before the settlement of the suit. Mr. Orrick insisted upon its passage as a pre-requisite to the---

Q To the Return Bill? The Return Bill was passed?

A Oh, no, the Return Bill---

Q That's what I'm talking about.

A Oh, I beg your pardon. I thought you meant the Sale Bill. Please let me retract that. I don't think the Return Bill has ever been passed, was it?

Q I don't think so. It was pending for some time, was it not?

A Off and on for years.

Q In the course of this time, between let's say 1948 and 1958, were any efforts made to dispose of the shares or Interhandel's interest to American companies?

29 A A great deal of activity. Somebody -- and I think this goes back almost to the original actor, and that was Remington Rand. These industrialists in this country had the misconception that they could make some kind of a deal with Interhandel and get these shares, and I steadfastly maintained, which was correct, that the property to the United States Government, albeit temporarily; but it was there. And so, there came up from one source after another

a theory of what we called a triangular settlement, that an American industrialist of acceptable standing to the Department of Justice or to the American Government would pay the Government "X" number of dollars and pay Interhandel "Y" dollars, and get the General Aniline stock, and that is what we called the "Americanization of General Aniline."

I have talked to hundreds of industrialists in America -- maybe that's an exaggeration, but nearly a hundred -- each of whom had some conception that somehow this was a workable thing.

Q Was it on the theory that it would be more acceptable to the United States Government to divest, is that the word---

A --in favor of an American?

Q In favor of an American company?

A Absolutely. They did not want to return the shares to the Swiss, and I was convinced beyond any peradventure that they never intended to return the shares.

Q Of the Swiss? That the United States Government---

30 A That's right, and my guidepost of settlement in this case assumed the premise that this was an impossible accomplishment to get the shares returned.

Q Oh, I see. But you did think it within the realm of possibility to work out one of those triangular

arrangements?

A I did not. I never thought it was possible.

Q You did not?

A What I did--- If the president of "X" Corporation wanted to talk to me, perhaps I was flattered to have him do it. I had never known so many industrialists, Mr. O'Donoghue.

Q So, there were negotiations?

A There were days and weeks and months of talk.

Q Were any offers made to the effect that a conditional offer, that a certain number of dollars would be paid to the Swiss for the shares, provided there was divestiture?

A You're pressing me now about details. Blair Holdings may have had a deal of that sort. I'm not sure. But you name it, and it was discussed. I can tell you that.

Q So, there was a considerable amount of that. When did that sort of offer, when did negotiations of that kind finally come to an end?

A I would say the last one I could remember --- and don't hold me too tightly to it --- was Bache & Co., the investment bankers, or stock brokers, whatever you want to call them. They seemed to me to be quite active in '58:

Q As late as '58?

A I would say so, but don't hold me too tightly.

Q I certainly wouldn't, and couldn't, I don't think.

\* \* \*

36

ROBERT ALFRED SCHMITZ

witness on behalf of the Defendant, was called as a witness,  
and having been duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. O'DONOGHUE:

Q State your name please.

A Robert Alfred Schmitz.

Q Where do you live?

A 111 Brookside Drive, Greenwich, Connecticut is where  
I live.

Q Where were you born?

A I was born in Charleroi, Pennsylvania.

Q When?

A In 1922 on May 4.

Q Would you briefly outline your education?

A I was educated -- I started school out in Indiana and  
then in 1929 my father, who at that time became connected with  
I. G. Chemical, took my brother and my mother and I to Europe,  
so I started being educated in Europe, and I was in schools in  
Switzerland and Germany for -- five years in Switzerland until  
1936. From then on to the Lawrenceville School, Lawrenceville,  
New Jersey. And thereupon I entered Columbia University in 1939.

Q What did you study at Columbia?

A At Columbia I studied -- I had a combination of



37 business administration and engineering -- synthetic organic chemistry and electrical engineering.

Q Who was your father?

A My late father was the first president of General Aniline and Film Corporation, and he was also president of the predecessor of corporation, which is the American I. G. Chemical Corporation, which was merged with the ANSCO Corporation in 1939 to form the General Aniline and Film Corporation.

Q How long did he remain as president of that corporation?

A Well, he remained as president, not as long as director. He was ousted by a rump board who tried to usurp the company from the rightful Swiss owners in 1941. However, he remained a director of the company and represented the Swiss until the time of the seizure by the Government and thereafter, too.

Q What were your years at Columbia University?

A Well, I put in three years at Columbia, but the war broke out.

Q What years?

A '39 to '42.

Q Where did you go from there?

A From Columbia University I went to work. The war broke out.

Q Where?

38

A I went to work for American Cyanamid Company Research Laboratory, Physics Division, Stamford, Connecticut.

Q In what position?

A I was at that time, I believe, the first industrial electron-microscopist in the United States.

Q How long did you continue in that situation?

A I was with the American Cyanamid Co. from the point I mentioned in '42 for about two years, very close to two years.

Q Where were you living at this time?

A I was living in Greenwich, Connecticut, which is, you know, just a few miles away.

Q Were you living with your father?

A Well, I was living with my father when I first started but I was married in December of 1942.

Q Did you continue to live in the same town?

A Oh, yes.

Q What was your father doing after the seizure of GAF by the U. S. Government?

\* \* \*

39

A Immediately following the seizure of the company in 1942 my father was defending the causes of Interhandel. He was defending this before Federal grand juries, and the Treasury Department, which had undertaken to have the President of the United States vest this company ---

\* \* \*

40 Q Aside from these grand jury investigations and tax case did your father do anything else during the course of the war that you were aware of?

A Yes.

Q What else?

A Well, there was the tax case which related ---

Q I asked you about that. What else?

A There were the grand jury matters.

Q Yes.

A Well, ---

Q Did you participate in this matter in any way?

A Yes, I participated -- I didn't participate in the  
41 grand jury matters. I don't think he even had benefit of counsel for that, but I participated in preparing him along with his confidential secretary in the moves that he was undertaking, and also he had ---

\* \* \*

Q Did you ever have occasion to go to Switzerland with your father?

A Yes.

Q When was that?

A In September 1946.

Q What was the purpose of that trip?

A The purpose of that trip was to go over and see his

principals, and I accompanied him to Basel, and during the course of that trip we talked to Dr. <sup>Y. S. M.</sup> ~~Bischo~~ and to Dr. Sturzenegger, and the purpose of the trip was for him to report to the Swiss about the defenses that he had maintained during the war related to the seizure of General Aniline and Film.

Q Did you participate in those conferences with those persons?

A I participated in some, if I participated in all. He may have talked to them somehow during the day I wasn't there.

Q But did you with your father talk to these people whom you have named?

A Yes.

Q This, you say, was in 1946?

A Yes, September, I believe.

Q Who was -- did you have any relatives in Switzerland that had any interests in Interhandel or GAF?

A Yes. Well, in Interhandel.

Q What?

A In Interhandel I had an uncle.

Q Who was that?

A Dr. Albert Gadow.

Q What was his position?

A He didn't occupy a position. He was present at meetings with Dr. Sturzenegger and I gather he was still consult-

ing with them on the recovery of the problems to recover General Aniline and Film.

43 Q Did he have any interest in Interhandel?

A I always understood -- I have no personal knowledge of his interests in terms of money.

THE COURT: Objection.

BY MR. O'DONOGHUE:

Q: At that time were you employed by any American corporation?

A Yes, I was.

Q Who were you working for then?

A I was working for Remington-Rand Co.

Q When did you go with them?

A I went with them in 1946 or late '45 perhaps. Late '45, I think it was.

Q What was your work with them?

A Well, I was senior research and development engineer in the Advanced Research Laboratories for Advanced Engineering in South Norwalk, Connecticut.

Q South Norwalk, Connecticut?

A South Norwalk, Connecticut, yes.

Q How long were you with them?

A Until 1945, until the time they intervened against Interhandel.

Q Was there any attempt made by them to acquire an interest in GAF ?

A Yes.

44 Q Could you explain what that was, if you know anything about it?

A I know a good deal about it. I actually was their special representative and sent to Europe repeatedly by them to negotiate with the officers and directors of Interhandel.

Q When were you sent there by them??

A I made four or five trips in '47 -- '46. I was over there in '46, but in '47 I made trips -- '48 and '49. I made a number of trips, perhaps five.

Q And you went simply as an employee of that company?

A No, I went as a special representative of that company to negotiate and to advise and help, form guidelines to a successful result for the Swiss and for these people.

Q Did you make any offer of purchase?

A I did not. There had been negotiated an option agreement that Frank MacNamara had been in the Justice Department Alien Property, and he had become general counsel of the company and Remington-Rand had sent a man by the name of Leopold Nemzek, and he had sent this man Nemzek to Zürich in 1946 and Mr. Nemzek had been given the title of a vice president of the company, and when I got over in 1946 I recall that Dr.

Sturzenegger and Dr. Eisele asked that my father and I undertake to moderate the excesses that they felt Mr. Nemzek was perpetrating on them. They didn't like the method of negotiating.

45 Q Did Dr. Sturzenegger tell you at this time or any time that he had the controlling shares of Interhandel?

A Yes. I have known Dr. Sturzenegger since I was 10 or 11 years old, and over the years I was very intimate with his matters and his bank had banked for me since I was a boy and I knew him as a boyhood friend.

Q Did anything come of this negotiation on behalf of Remington-Rand?

A No, nothing came of it. Well, a lot came of it. Nothing good, I think. A lot of things developed from it.

Q How long did you continue your relationship with Remington-Rand?

A Until the moment that Mr. MacNamara told me that Mr. Rand decided to file a motion to intervene against Interhandel, at which time I immediately walked into Mr. Rand's office and resigned.

Q Why did you do that?

A Because I would not condone any such action against Chemie or Interhandel. I knew that the option had expired, to my personal knowledge, and I would not be working for a man who was going against what I knew was not right, so I told



him I wouldn't work for him and quit.

Q Did you go to work thereafter for any other American company?

A Yes.

\* \* \*

46 A The next company for whom I was a special representative with regard to this matter was the W. R. Grace Co.

MR. WILSON: Will you fix that year?

BY MR. O'DONOGHUE:

Q When was that?

A 1953.

Q Was that immediately after leaving ---

A No, you asked me the next company with whom I was employed in this matter and that was the Grace Co.

Q Well, when did you leave Remington-Rand?

A 1950.

Q What did you do between 1950 and ---

A I went immediately to Switzerland and conferred with Dr. Sturzenegger.

Q What did you do between '50 and '53?

A I discussed the possibility of other companies contributing some help towards a solution that might be workable, but against the type of tactics employed by Rand. My position was that if the Swiss had a right to their property back as a

47 matter of right and I didn't feel any American buyer could, by influence, guide the Government about this. But I felt that if the Swiss were willing to consider the matter of Americanization of Aniline, it would be a matter of educating these companies and Dr. Sturzenegger and also in meetings with Dr. Gadow and Walter Germann that in view of the fact that the Swiss, although they demanded their property back as a matter of right, they would consider the Americanization so-called of General Aniline.

Therefore, it became a matter of preventing another Rand fiasco. I mean, another situation where the Swiss would be -- find themselves in some collateral litigation rather than really trying to get help, that I felt they deserved help and they knew I wanted to get for them.

Q What other American companies did you have any dealings with between the time you left Remington-Rand and went with W. R. Grace?

A I am refreshing my recollection now. In fact, I forgot something that happened before Grace.

In 1950 I flew to Paris where I met Floyd Odlom. Mr. Odlom was head of the Atlas Corporation. Mr. Odlom and I went to Switzerland and had a series of meetings in Switzerland with Dr. Sturzenegger and Mr. Germann, with the idea in mind that, as Mr. Odlom pointed out to the Swiss in my presence, that he knew Mr. Oswald Johnson and people in Washington, and that if the validity of the Swiss cause could be made known in the

United States Government properly, that it might help to get the Government to unvest the property, so I had negotiations in Switzerland with Mr. Odlom at Biarritz and later in California and also in New York.

Q Did you have any financial arrangements with them?

A I never arrived at any financial arrangements with Odlom for reasons of my own.

Q Well, thereafter was there any other American company?

A Yes. After I was talking with Mr. Odlom I was approached by people representing Curtis-Wright Corporation.

Q When was that?

A 1952, I believe it was, and this was Shields and Co., who are a Wall Street investment banking house, and they stated to me that they had the Richard Mellon interests in Pittsburgh and Curtis-Wright. Mr. Paul Shields, the principal and general partner of the company, was head of Curtis-Wright at the time and I entered into an agreement to represent the Shields interest in trying to work out negotiations to a successful recovery of the property.

MR. O'DONOGHUE: Will you mark these for identification as Plaintiff's 1, 2, 3 and 4.

\* \* \*

49

Q Mr. Schmitz, I show you what have been marked as Plaintiff's Exhibits 1, 2, 3 and 4 for identification, and ask you if you can tell us what they are?

A Yes, I will try to.

Exhibits 1 and 2 were drawn up within two days of each other, January 12.

Q To whom are they addressed?

A They were addressed to me.

Q Who from?

A From Shields and Co.

One was signed by Mr. Paul Shields and the other was signed by Sherrill, general partner, and the second letter was signed by Macrae Sykes, general partner.

THE COURT: What is the relevance of these letters?

50. MR. O'DONOGHUE: The relevancy of this is to show that he had arrangements with various American companies who would have paid him handsomely for working out an arrangement, to indicate two things: One, that his services were regarded as valuable, and two, as indicative of the recognition of his knowledge and close association with Interhandel. Those are the real purposes of them.

MR. WILSON: Without conceding the paraphrase, we have no objection to the letters. I take it that the witness is simply going to say this is a letter from so-and-so, to be

dated so-and-so. The letter speaks for itself when it is offered.

\* \* \*

51 MR. WILSON: You said January 12th and you didn't give the year.

THE WITNESS: I beg your pardon. January 12, 1951, and January 15, 1951.

MR. O'DONOGHUE: Am I to understand that Mr. Wilson has said he has no objection to my offering them in evidence?

THE COURT: That is the Court's understand. Are you offering them?

MR. O'DONOGHUE: I will offer them.

THE COURT: Without objection they will be received.

(Plaintiff's Exhibits 1, 2, 3 and 4 were received in evidence.)

\* \* \*

52 BY MR. O'DONOGHUE:

Q Did anything eventuate from that ---

A Oh, yes.

Q --- those letters from Shields and Co.?

A Yes. Upon having these letters delivered to me -- into my possession, I flew to Switzerland and presented them to Interhandel in Basel, Switzerland, to undertake negotiations, talk with them towards doing what the letters outlined. The

letters speak for themselves, of course, but the purpose I had in asking for one of them was to be able to show to Interhandel that the Shields people were oriented by me as to the pre-conditions that we had previously discussed in Switzerland that would be necessary if they were to entertain any possible American interests.

Q Let me get one thing straight. Was Basel the headquarters of Interhandel?

A Yes, its offices were located at Peter-Marien-Strasse, Basel.

53 Q I don't think you will mind my asking this. Later on there were a lot of trips to Zürich. Was that ever the headquarters of General Aniline?

A No, except the airplanes landed there. You go to Zürich, when you go to Basel or the Swiss would come to see me in Zürich.

Q Zürich is headquarters of the Union Bank and other banks?

A Other banks, it is a banking center, yes, it is.

Q When I ask you if anything came of that, Shields and Co. never succeeded in entering into any contract with Interhandel for GAF stock, did it?

A No.

\* \* \*

Q After Shields and Co., what was the next American company that had any -- if there was any other, that had an interest in Interhandle or GAF that you had any dealings with?

A The W. R. Grace Co.

MR. WILSON: Excuse me a moment, Mr. O'Donoghue. When you say "had dealings with," this misleads me. I gather from this correspondence with Shields that the witness was Shields' agent. Are you meaning that this is a line of instances where  
54 Mr. Schmitz was acting as agent for these American companies?

MR. O'DONOGHUE: Yes.

THE COURT: He testified nothing came of the Shields---

MR. O'DONOGHUE: Yes, Your Honor.

THE COURT: Therefore, the next company he became interested in the W. R. Grace Co. in August of 1953.

BY MR. O'DONOGHUE:

Q What was the nature of your employment there?

A I was hired as a special representative of the Grace Co. to represent it in its interests to pursue acquisition of all the vested stock in General Aniline and Film Corporation.

Q How long were you employed by W. R. Grace & Co.?

A Til 1956.

Q Did you have any fee arrangement with them? In relation to GAF stock?

A Yes, I had a participation arrangement with them in



the acquisition, and a fee consideration arrangement, both.

Q When you speak of participation, was that your initial arrangement with W. R. Grace & Co.?

A There were two aspects of the initial arrangement. There was an employment arrangement and participation with Hatzel and Buehler, Inc.

THE CLERK: Plaintiff's Exhibit No. 5 is marked for identification.

\* \* \*

55 MR. O'DONOGHUE: I will ask you can identify Plaintiff's Exhibit 5 for identification.

THE WITNESS: I can identify it, yes.

BY MR. O'DONOGHUE:

Q What is it?

A It is an agreement confirmed by me whereunder I was ---

MR. WILSON: Let the paper speak for itself.

BY MR. O'DONOGHUE:

Q It is a letter to you?

A Accepted by me to the Grace Co. It my copy.

Q Do you know those initials?

A I think Mr. Rupley.

56 Q MR. O'DONOGHUE: I offer this in evidence.

MR. WILSON: No objection.

THE COURT: Without objection it will be received.

\* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

-----  
ROBERT A. SCHMITZ,

Plaintiff,

vs.

SOCIETE INTERNATIONALE,

Defendant.  
-----

CIVIL ACTION  
85-67

Washington, D. C.

January 6, 1970.

VOLUME II

Page 57 - 216

Defendant's Copy

MARIE S. TAYLOR  
Official Court Reporter  
Room 6812, United States Courthouse  
Washington, D. C.

59 Q Mr. Schmitz, you remember when we adjourned yesterday afternoon, I was talking with you about arrangements that you had with Grace & Co. with respect to the GAF matter. And a document was introduced in evidence which related to that.

Does that document represent the sole agreement with the Grace Co. in this matter?

A No, it does not.

Q Well, what additional agreement was involved?

A An agreement was entered into by the Grace Co. with Hatzel and Buchler, Inc.

MR. WILSON: Is this a written document that he is now referring to, sir?

MR. O'DONOGHUE: We have a proposed form of minutes which was a written document. You have seen this, haven't you, Frank?

\* \* \*

60 THE CLERK: Plaintiff's Exhibit No. 6 is marked for identification.

\* \* \*

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you what has been marked as Plaintiff's Exhibit 6 for identification and ask you generally what that is.

A This is a photostat of copies of minutes and resolutions of the Board of W. R. Grace & Co., which photostat was made in Switzerland from the original that I delivered to Dr.

Sturzenegger in the presence of Mr. Germann in August of '53, and it is part of the agreement, proposals of my original representation of the Grace Co. with Interhandel, and it formed part of the agreement entered into between Hatzel and Buehler, Inc. and the W. R. Grace and Co., of which I also was part.

Q Is the document complete?

61 A This photostat is incomplete. It has my own handwriting notations on it, and one page was removed from it in Switzerland after I discussed the matter with Dr. Sturzenegger at his suggestion because it involved the arrangements between Hatzel and Buehler and myself and Grace Co.

Q When was this discussion held?

A This discussion was had in Dr. Sturzenegger's board-room immediately upon my arrival in Switzerland at that time, which was ---

Q What date?

A My recollection would be that it would be approximately August 25 or 26 of 1953.

MR. WILSON: Mr. O'Donoghue, did you fix the date of the minutes?

MR. O'DONOGHUE: No.

THE WITNESS: This proposal, that was submitted to the W. R. Grace Co. in my presence in the office of Mr. Grace and Mr. Wilson at the Grace Co. with Mr. Al Wenzel on or about the 17th or 18th of August of 1953.

BY MR. O'DONOGHUE:

Q Does that spell out any arrangement you had for further compensation?

A This photostat does not spell it out. The arrangement I had was a share of the arrangement of Hatzel and Buehler with Grace.

Q Did you tell Dr. Sturzenegger that?

A Yes, I did.

Q What did you tell him?

\* \* \*

62

THE COURT: What is the date of the minutes?

THE WITNESS: I told them they were delivered down to the Grace Co. sometime, I believe, after August 17th or 18th or within a few days of that.

MR. WILSON: If Your Honor please, Plaintiff's Exhibit No. 5, dated August 21, says in the last paragraph: "This letter sets forth the entire and only agreement between us and there are no other agreements or commitments, verbal or otherwise, between us."

THE WITNESS: That's right.

MR. WILSON: And this is an earlier document, is it?

MR. O'DONOGHUE: Well, Mr. Wilson, it seems to me that is appropriate for cross-examination. I don't know that it is a basis for -- I don't know what you call it, an objection, an interruption now ---

MR. WILSON: Let's call it both. I object to it because it is ---

63

MR. O'DONOGHUE: I haven't offered it.

MR. WILSON: I object to this line of testimony because it is contrary to No. 5.

THE COURT: You may proceed. I will overrule the objection.

BY MR. O'DONOGHUE:

Q Was there something additional to the provisions of Exhibit No. 5 then and if so, what were they?

A The arrangement with Grace with respect to the acquisition of Interhandel's interest in and to General Aniline And Film Corporation by the W. R. Grace Co. also included an arrangement whereby Hatzel and Buehler, Inc. would obtain from the Grace Co. a call option of 15 percentum of all shares bought at the price negotiated by the Grace Co., and I personally had 10 percent of that 15 percent at the same price, financed for me, which would amount to, on the basis of the then \$60 million level, \$6 million of stock.

Q2 Did you tell Dr. Sturzenegger that?

A Yes, I did.

Q Did you give him this document which is marked Plaintiff's 6 for identification?

A The document is a photostat. I gave him copies of the originals and this here is a photostat with the page deleted

64

involving Hatzel and Buehler and the 15 percent at his suggestion, because he stated to me that he would be showing this to other directors of Interhandel, and suggested the subject covered by the other pages would be more important to them than disclosing personal transactions.

Q In other words, this appears to be a photostat from the files of Dr. Sturzenegger or Interhandel?

A Yes, indeed.

MR. WILSON: If Your Honor please, I apologize for these interruptions, but I must be intelligent about these things. I don't quite understand what is the reason for the identification of these minutes.

The heading says "Proposed Minutes" and I don't know whether this is intended simply to refresh the witness' recollection as to the transaction or whether it is an identification of an authentic document.

THE COURT: Will you enlighten us on that, Mr. O'Donoghue?

MR. O'DONOGHUE: Yes, sir.

BY MR. O'DONOGHUE:

Q Were these minutes actually enacted?

A , This type proposed minutes was requested of Mr. Wenzel of Hatzel and Buehler by Mr. Charles E. Wilson at the time, and I went with Mr. Wenzel to the Grace Co. at which



time we submitted these and the proposal was accepted in my presence at the Grace Co.

\* \* \*

65

THE COURT: The question is were those minutes adopted?

THE WITNESS: I don't know whether those minutes were adopted. I only know the agreement to give the call option was agreed upon in my presence.

\* \* \*

MR. O'DONOGHUE: Yes, I am going to offer it. I will offer it now.

\* \* \*

MR. WILSON: I object to it for not being any more than a proposed document.

THE COURT: The fact is the testimony is that they were shown to these people in Switzerland, as I understand it, at the time ---

MR. O'DONOGHUE: Yes.

THE COURT: --- as representing an agreement. Is that a correct statement?

MR. O'DONOGHUE: Yes, Your Honor.

66

THE COURT: And Mr. Sturzenegger was there. Is that right?

MR. O'DONOGHUE: Mr. Sturzenegger was there.

THE COURT: I will overrule the objection.

THE CLERK: This is received into evidence as Plaintiff's No. 6?

THE COURT: Yes, received.

\* \* \*

BY MR. O'DONOGHUE:

Q After August 17th of 1953, what did you do in respect of your work with Grace & Co.?

A I went to Switzerland, as I testified, immediately and went to Basel and made the appointment with Dr. Sturzenegger.

Q Did you go alone?

A I went alone, and Dr. Sturzenegger received me in his boardroom and when I told him that I had some papers to deliver to him which were my representation as special representative of the Grace Co., he went to a corner of the room and rang a bell, and within a few minutes Mr. Germann came in.

Q Who is Mr. Germann again?

A He was then the Managing Director of Interhandel.

Q And what was Dr. Sturzenegger's position at this time?

\* \* \*

67 THE WITNESS: His position was member of the Board of Directors of Interhandel, as was Mr. Germann.

BY MR. O'DONOGHUE:

Q Did he ever tell you what his stock position was in Interhandel?

A Yes.

Q What did he say it was?

MR. WILSON: And when he said this.

THE WITNESS: He said it repeatedly over the years. I had at least 20 trips to Europe in which I discussed this. I couldn't recall all the times he said it to me, but he said to me that he controlled the preferred stock and that he, through Industrie Bank -- and that he was the controlling stockholder of Interhandel through his bank.

BY MR. O'DONOGHUE:

Q What followed after your meeting with Dr. Sturzenegger in August of 1953?

A What followed was a series of discussions and meetings which were what we would call "pre-negotiations" of the bases of a possible negotiated acquisition. There was at that time ---

Q Who participated in these meetings?

A I did.

Q And who else?

68 A Dr. Sturzenegger and Mr. Germann. Mr. Germann would go back to the United States, as I did. And in December 1953 I was in Paris with Mr. Peter Grace.

Q Who was he?

A He was the head of the Grace Co.

Q President?

A I think he had the title of president, yes.

MR. WILSON: May it please the Court, can we get something oriented here, if you please? If Mr. Schmitz is recounting these events in order to show his earning power,

this is of course admissible. But the recital of abortive attempts to consummate deals for third parties with Interhandel, it seems to me, is not relevant to this case.

MR. O'DONOGHUE: Well, of course, it is relevant for the first part, but it is also relevant to show his intimate association with Interhandel and, therefore, the reasonableness of their ultimate request to have him act as their agent.

MR. WILSON: But his recitation for yesterday and today is that he has been an agent of third parties.

THE COURT: I think it is all a part of the picture which the Court has to consider. I will overrule.

\* \* \*

69 BY MR. O'DONOGHUE:

Q You say you met with Mr. Peter Grace. What did you do after that?

A I was asked by Mr. Peter Grace to go to Switzerland immediately again and to try and set up a meeting in Basel with the Board of Directors of Interhandel towards negotiating a purchase option agreement or some agreement which would permit the Grace Co. to cooperate with Interhandel, to help them recover the premises and to purchase thereupon.

Q Did you go to Basel?

A Yes, I did.

Q Who did you meet with them?

A I met in Basel with Dr. Gatow and Dr. Sturzenegger.

Q Was the meeting arranged with officials of Grace Co.?

A Yes, it was.

Q When did that occur and who was present?

A A meeting was arranged and held, as I recall, in the boardroom of Interhandel on Peter-Marien-Strasse. Present were Dr. Edmund Wehrli, who is in this room; Dr. Felix Iselin, president of Interhandel. Also Dr. Hans Sturzenegger, Mr. Charles E. Wilson, Mr. Haslam, Mr. Peter Grace and myself.

Q Could you summarize very briefly the nature and result of that conference of conferences?

\* \* \*

70

THE WITNESS: Incidentally, Mr. Walter Germann was there. I don't know whether I said that. He was also present.

\* \* \*

THE WITNESS: Well, the result was that the pre-negotiated level of a transaction which I had worked out previously that would have given Interhandel a \$55 million part in Grace preferred convertible shares and part cash was suddenly transformed without my knowledge to an offer by Mr. Peter Grace in the room of \$40 million cash on an almost take-it-or-leave-it basis, and the meeting suddenly broke up.

Dr. Felix Iselin didn't take very long to push his chair back and stand up. It was a very consternating breakup.

BY MR. O'DONOGHUE:

Q Was that the end of the negotiations on behalf of Grace with Interhandel?

A No, no. It was for some period of time.

Q Was there any further negotiations then that you participated in?

A Yes.

Q What was that?

A Into 1956 I was over to Switzerland on several occasions 71 and also to Washington on several occasions. The problem basically was one of price and, secondly, it was one of fitting the timing of negotiations to the intricate procedural matters in the Federal District Court.

Q Did you see anyone in Interhandel's offices concerning further negotiations on behalf of Grace?

A Well, not in Interhandel's offices on Peter-Marien-Strasse. But I saw them in other places.

Q I meant did you see officers of the company?

A Oh, yes. My answer is in the affirmative.

Q There was a lapse between 1953 and 1956 with regard to any negotiations on behalf of Grace?

A Well, there was no lapse. It was after Mr. Peter Grace advanced the \$40 million cash figure that Mr. Grace stated to me to inform Interhandel ---

Q I am talking about what you said to Interhandel, not conferences you had with Mr. Grace.

A I told -- at that time the Interhandel people stated to me under no circumstances -- after this meeting I had a second meeting with Dr. Sturzenegger while it was still in Basel and he stated to me at his bank the following day, I recall that he wanted me to express the Interhandel's highest esteem for Mr. Charles E. Wilson and for the Grace people, but under no circumstances could the Board of Directors consider a price of \$40 million in view of the published figure of \$60 million under 72 the Blair option.

Q How long did you work for W. R. Grace & Co.

A Until the time in 1956 around May 10th when Mr. Charles E. Wilson did not choose to be reelected Chairman of the Board of Directors.

Q Did you have dealings with any other American companies looking toward acquisition of GAF stock?

A Yes, I did.

Q What was the next one in time?

A Well, this was -- I had discussions in 1956 with three companies, principally three companies. One company was the General Dynamics Corporation, another was National Lead Co.

MR. WILSON: Can we establish all three at this point?

THE WITNESS: The third one, Mr. Wilson, was Food Machinery & Chemical Corporation in connection with Bell & Howell, and I had also passing discussions with the Chairman of the Board and President of Air Reduction.



BY MR. O'DONOGHUE:

Q Did General Dynamics -- did you undertake to represent them?

A No, I would not and did not.

Q Did they make an offer of representation?

A Yes, they did.

\* \* \*

73 THE COURT: I am trying to get the significance and the relevancy of these various representations and offers to represent different companies.

Now you are going into this other company. What is the significance of this testimony? What does it intend to establish?

MR. O'DONOGHUE: It tends to establish that he was recognized as a person peculiarly qualified to deal with this matter of the relationship of Interhandel and GAF and possibly as a representative for acquiring it and that his services in that respect were highly valued.

THE COURT: That is the purpose of these various offers?

MR. O'DONOGHUE: That is the purpose, yes.

THE CLERK: Plaintiff's Exhibit No. 7 is marked for identification.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's Exhibit 7 for identification and ask you if you recognize that?

A Yes, I recognize this.

Q What is it?

A It is the proposal offer that I worked out with Mr. Frank Pace, which would be the basis of an undertaking, provided that the General Dynamics Co. would adhere to certain pre-conditions that I had established.

MR. WILSON: Is this proposal indicative of an engagement or not?

MR. O'DONOGHUE: Not an actual engagement. It was an offer by them.

\* \* \*

MR. WILSON: Are you offering it?

MR. O'DONOGHUE: Yes, I offer it.

MR. WILSON: I object to it until two things are established. This is undated except as to year and it is unsigned. I would like to know whether it was ever signed. I would like to know whether this was Mr. Schmitz's proposal. May I have a voir dire inquiry of the witness on this point?

THE COURT: Yes, you may.

VOIR DIRE

BY MR. WILSON:

Q Mr. Schmitz, was this document ever executed?

A No, it was not.

75 Q Was it prepared by you?

A No, it was not. It was prepared after I had discussions with General Dynamics, Mr. Pace at General Dynamic's offices and at Mr. Pace's home.

THE COURT: Who did prepare it?

THE WITNESS: I don't recall who typed it up or prepared it, but it came out of discussions with Mr. Pace and he said he would give me an offer substantially like the offer made in the Grace transaction.

BY MR. WILSON:

Q Did you decline to sign this?

A I declined to represent them and I declined to sign it.

Q Was your declination because the money was not large enough?

A No, no. It was because General Dynamics looked to me like they would be just another Remington-Rand to start messing up the works.

Q But the dollars you mentioned in this proposed instrument were acceptable?

A With the option agreement, yes, sir, as it reads.

(End of Voir Dire)

MR. WILSON: With that background, if Mr. O'Donoghue wishes to offer it, we will not interpose any objection.

BY MR. O'DONOGHUE:

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THE COURT: Are you offering it?

76 MR. O'DONOGHUE: Yes, I am offering it.

THE COURT: Without objection it will be received.

\* \* \*

BY MR. O'DONOGHUE:

Q I believe you said you also had some negotiations with National Lead?

A Yes, I did.

Q Did you ever undertake to represent them?

A Well, I shook hands with Mr. Martino on the deal and he asked my attorneys to draw up this agreement here, and shook my hand. I went back to the offices to undertake it.

My answer is yes, I undertook to appoint ---

THE CLERK: Plaintiff's Exhibit No. 8 is marked for identification.

\* \* \*

Q When you refer to this document here, are you talking about Plaintiff's Exhibit 8 for identification?

A Yes, I am.

77 Q Was that actually signed?

A No, it was not.

Q Why not?

A Well, I received a telephone call from a Mr. Drew or Drows, I think his name was. He was present with Mr. John Nugent and myself and Mr. Martino and Mr. Charles E. Wilson at

the time that Mr. Martino shook my hand and asked my attorneys to draw this up, the agreement we negotiated, and Mr. Drews told me that a vice president of the National Lead Co. by the name of Wildner had come back from Zürich and that they wanted to defer signing the agreement until Mr. Wildner could directly approach Interhandel in Zürich without me.

Q Does this document represent your oral understanding with them?

A It not only represented my oral understanding, it represented we had had negotiations for several meetings with Mr. Martino in the presence of my New York counsel, John Nugent, and this is specifically what Mr. Martino asked Mr. Nugent to draw up for signature when he shook my hand.

MR. O'DONOGHUE: I offer it for evidence.

MR. WILSON: May I inquire as I did with respect to the other document?

THE COURT: Yes.

VOIR DIRE

BY MR. WILSON:

Q Does this have a month which is August in it? Was 78 this document signed?

A No, it was not.

Q Were the terms of it nevertheless performed?

A The terms of it weren't performed because it wasn't executed.



Q I just asked you the question were they performed?

A No, no.

Q Did you enter into any relationship with National Lead?

A I did when Mr. Martino shook my hand.

Q Beyond that, did you have a representation?

A No.

Q Have you since been critical of National Lead for this treatment?

A Not particularly. I think their judgment was bad and I so stated to them.

\* \* \*

(End of Voir Dire)

MR. WILSON: Thank you. I will cross-examine. I have no objection.

THE COURT: Without objection it will be received.

\* \* \*

79

BY MR. O'DONOGHUE:

Q Mr. Schmitz, did you or did you not go to Switzerland on behalf of National Lead?

A Never.

Q Did you enter into arrangements with any other American company?

A Yes.

Q What company was that?

A Food Machinery & Chemical Corporation.

Q Food Machinery & Chemical Co.?

A Now called FMC Corporation.

Q When was that?

A In the latter part of 1958, end of November or early December, I think.

\* \* \*

THE CLERK: Plaintiff's Exhibit No. 9 is marked for identification.

\* \* \*

BY MR. O'DONOGHUE:

Q What agreement did you enter into with Food Machinery & Chemical, or may I ask the question this way. Does Plaintiff's Exhibit 9 for identification represent that agreement?

A Yes, it does.

80 Q Was that signed?

A Yes, it was.

Q And was the payment made?

A Yes, it was.

Q What did you do for this payment?

A For this payment I undertook to go to Switzerland to consult with Interhandel and get -- deliver a report back to Mr. Paul Davies as to whether or not Interhandel would be disposed to entertain overtures, possible negotiations.

Q Was the agreement limited to that single trip?

A It was restricted to that single trip, just to go over, report.

\* \* \*

MR. O'DONOGHUE: I do offer this.

MR. WILSON: May I back up a moment and ask, as part of the voir dire, other inquiry?

VOIR DIRE

BY MR. WILSON:

Q Is that the sole agreement between you and Food Machinery?

A No, it wasn't the sole agreement.

Q Have you got another written agreement?

A No.

81 Q But it is not the sole agreement?

A It is not the sole agreement..

Q You had an oral agreement besides?

A Yes.

Q Made before or afterwards?

A Before.

(End of Voir Dire)

MR. WILSON: I don't object to the document.

THE COURT: It will be received.

\* \* \*

Q Were they made on different dates, or what?

A Well, I haven't said what these agreements are.

Q I know you have not. I am asking when they were made?

82 A Well, I had a series of meetings with Mr. Paul Davies and Charles Percy.

Q Did you have any meetings after the written agreement?

A Yes.

Q Were there any agreements subsequent to that written agreement?

A Subsequent to that written agreement I reported to Mr. Davies.

Q Any agreements made?

A Not with respect to my report. My reports would be another matter to tell you about.

THE COURT: I will sustain the objection.

BY MR. O'DONOGHUE:

Q Did you go to Switzerland pursuant to this agreement?

A Yes, I did. I did have to look at my passport records immediately following. Within a matter of 24 hours.

Q When would that be, as far as years are concerned?

A Early December 1958 this was.

Q Referring to the exhibit, would that refresh your recollection when you went?

A I went within 24 hours of that, I recall.

THE COURT: When was that?

THE WITNESS: November 24,

THE COURT: What year?

THE WITNESS: 1958.

83

BY MR. O'DONOGHUE:

Q Where did you go and who did you meet with when you went there on that occasion?

A On that occasion of that trip, I had a number of meetings, but I first went to Basel and I met with Dr. Albert Gatow and then I met with Dr. Gatow and Dr. Sturzenegger and then I was asked to go to Chur to meet with Dr. Niederer. And thereupon I was asked to go to Zürich to meet with Dr. Hugo Frey.

\* \* \*

84

BY MR. O'DONOGHUE:

Q Did Dr. Frey and Dr. Niederer -- they were lawyers, were they?

A Yes, they were lawyers. They were partners, too.

Q Did they represent to you that they represented Interhandel or not?

A Yes, they represented to me that they were the group who represented Interhandel and that they were attorneys for Credit Suisse, and they represented Dr. Reinhardt, who was the head of Credit Suisse Bank on the Executive Board.

Q What relation was he to Interhandel then?

A Well, he was a member of the triumvirate of the Cooperative Committee of the Committee of the Board of Interhandel.

Q What about Dr. Sturzenegger at this time? Did he say to you what his position was in relation to ---

A Yes, he did. Dr. Sturzenegger said to me that he no longer had any of the control that he previously had exercised in the company. However, he said that he still had about 30 percent of the shares of the stock equity, and that he was profoundly concerned.

He was no longer a member of the Board of Directors, but as a 30 percent stockholder he was very much concerned with the recovery of Interhandel's rights and their property in the United States, and this he asked me -- we had long discussions. But in response to this question he asked me to ---

MR. WILSON: Objection. It's now been established that Dr. Sturzenegger was not a director at the time these

statements were made, only a shareholder, and there isn't a law anywhere that says a shareholder can bind a corporation in its statement unless he is authorized to do so.

This is clearly hearsay.

36

THE COURT: What do you say, Mr. O'Donoghue?

BY MR. O'DONOGHUE:

Q What about the other gentlemen?

A When I went to see Dr. Niederer?

Q I mean what they represented to you.

A I have already represented that Dr. Niederer said he represented Interhandel and represented Dr. Reinhardt, a member of the Executive Committee, and that he could authoritatively state to me Interhandel's positions. At that point in time he stated that to me.

Q What did he state to you?

A I was in a meeting up in Chur for a whole afternoon.

Q Dr. Niederer?

A Dr. Gadow.

Q What was that discussion?

A I was sent there -- I mean told to go there with Dr. Gadow to speak to Dr. Niederer, because I was told that Dr. Niederer -- that his brother was the Swiss Government's attorney at The Hague, and that Dr. Niederer and Dr. Frey had ---

\* \* \*



87

Gadow

MR. WILSON: Did Dr. Gatow tell you this?

THE WITNESS: Tell me what?

MR. WILSON: The official positions of these individuals you are now talking about.

THE WITNESS: Dr. Sturzenegger told me. Dr. Gatow told me and ---

THE COURT: I have sustained the objection to anything stated by Dr. Sturzenegger at this time.

MR. WILSON: You say Dr. Niederer told you?

THE WITNESS: Yes.

MR. WILSON: Well, we will have that, too, later on.

BY MR. O'DONOGHUE:

Q What did Dr. Niederer say?

A When I met Dr. Niederer, I brought to his attention the fact that I was over there looking into the possibility of acquisition by Food Machinery, but I was informed by Dr. Sturzenegger in my previous meeting, I think it was the day before, that Dr. Sturzenegger said Interhandel would not be interested in dealing with any American buyers, that they wanted an agent of their own choosing to help resolve this in the United States, and I was introduced to Dr. Sturzenegger and was told -- and -- was told Dr. Niederer ---

MR. WILSON: Told by whom?

88

THE WITNESS: Well, I was told by Gatow.

MR. WILSON: I object to Dr. Gatow's statement.

THE WITNESS: He was there.

MR. WILSON: I understand, but Dr. Gatow is clearly not an agent of the corporation.

THE COURT: I will sustain the objection.

BY MR. O'DONOGHUE:

Q Dr. Niederer, you say he was attorney for the corporation?

A Yes, he told me he was attorney for Credit Suisse and spoke for Dr. Reinhardt, who was on the Executive Committee of the Board of Directors of the company.

MR. WILSON: I don't think that it is an agency. I will object to the testimony.

THE COURT: I will overrule the objection.

BY MR. O'DONOGHUE:

Q Did I understand you to say that they said they were not interested in any further negotiations for the acquisition of GAF stock by an American corporation?

A That is true.

Q What did Dr. Niederer say as to what they were interested in?

A Dr. Niederer said Interhandel was interested in recovering -- getting back its property as a matter of right

89 and that the matter would be pursued at The Hague in the final eventuality.

He stated to me that the activities of speculators and the activities of intervening stockholders' groups made it extremely difficult for the Swiss cause. He stated to me that the efforts on the part of Dr. Sturzenegger in conjunction with the Swiss Government in his office to reorganize the company, using the preferred shares of Dr. Sturzenegger as the power to do so, was of paramount importance.

He stated to me ---

MR. WILSON: Is this in November of 1958?

THE WITNESS: This was in early December of '58.

MR. WILSON: Thank you.

THE WITNESS: He stated to me that the struggle of Interhandel in Switzerland was one now of standing by the Swiss Government's backing toward The Hague. He stated to me that under no circumstances could they afford to have the company exposed to pressures of speculative elements.

I told him of the proposal to undertake -- to interest Mr. Charles E. Wilson in a trust whereby Mr. Wilson would exclusively represent Interhandel with full powers in the United States of America to settle and sell and negotiate with the United States Government, and I undertook -- I told Dr. Niederer that I couldn't risk undertaking this suggestion, which had

90 been discussed in Basel the day before, if there would be any possibility that with a large family -- that I had eight children -- and that with a large family that I couldn't undertake to have something started which would be undermined, and that I wanted to know about Mr. Walter Germann whom I had opposed for years -- who had been deposed from the management of the company.

And Dr. Niederer said to me, "Mr. Schmitz, Mr. Germann is out and he will stay out." Then Dr. Niederer stated to me that it was of vital importance to the interests of Interhandel and of Switzerland that the justice of their cause be properly presented in the highest councils of the American Government and that they, under no circumstances, could afford to risk any kind of failure in this matter, and that he then asked me, after several hours of talk, to please be ready to go to Zürich to meet his partner, Dr. Hugo Frey.

BY MR. O'DONOGHUE:

Q Did you do that?

A Yes, I did that.

Q What conversations were held with him?

A I went to Zürich alone and I met Dr. Frey and Dr. Frey told me that ---

MR. WILSON: Wait a minute. If the Court please, I object to the conversation with Dr. Frey until it is established he was an agent of Interhandel.

91 THE COURT: Who was Dr. Frey?

MR. O'DONOGHUE: He was a law partner of Dr. Niederer.

BY MR. O'DONOGHUE:

Q Did he represent to you what his position was?

A Dr. Frey stated to me that he was several things. First, he was attorney for Dr. Sturzenegger. Secondly, that he represented Interhandel, that he was attorney for Credit Suisse, that he was on the Board of Auditors of Credit Suisse and that he represented Dr. Reinhardt as well as his partner.

\* \* \*

Q You were about to recount your conversations with Dr. Frey in Zürich?

A In Zürich, yes, at his offices.

Q What were those conversations?

92 A Well, I recall that Dr. Frey questioned me at length. He stated to me that he would not get involved in any approach towards the trusteeship on behalf of Interhandel or on behalf of Dr. Sturzenegger or any groups. He said no one group of the company controlled it at that point and that he would not personally allow himself to get involved at all, unless it was on a sound basis whereby he could come to the United States with the assurance that he could talk with Mr. Charles E. Wilson and with the assurance, on the other hand, that he checked out with Dr. Reinhardt about the possibility of Dr. Reinhardt

meeting Mr. Wilson at either some neutral point, either Lisbon, I think it was, or Nassau.

Dr. Frey questioned me at length as to whether this could be kept within the confines so that the situation would not explode in the face of Interhandel.

Q Did he ask you to do anything on behalf of Interhandel?

A He asked me to contact Mr. Wilson in New York and speak with Mr. Charles E. Wilson about all the matters that had been deliberated in Switzerland during my trip.

Q Is that pretty much the extent of your conversation with Dr. Frey?

A As I recall now, yes.

Q What did you do pursuant to that request?

MR. WILSON: What request?

THE WITNESS: Following Dr. Frey's ---

93 MR. WILSON: I don't understand the question. What request?

THE WITNESS: To abide by the confidential relationships that he imposed in order to protect Interhandel.

I went back to the United States and saw Mr. Charles E. Wilson.

BY MR. O'DONOGHUE:

Q Did Dr. Frey ask you to do that?

A Well, Dr. Sturzenegger and Dr. Frey asked me to do that and also when I was with Dr. Niederer, he stated, as I testified, that the situation was so important ---

Q What did he ask you to do in respect to Mr. Wilson?

A To go and to see Mr. Wilson about the possibility that Interhandel would be interested in having Mr. Wilson accepting mandate to act as the sole, exclusive trustee with respect to all the property seized by the Government.

Q Did you then return to this country?

A Yes, I did.

Q What did you do when you got here?

A I made an appointment to see Mr. Charles E. Wilson.

Q What did you ask him on behalf of Interhandel?

A I told him that from my trip to Switzerland ---

MR. WILSON: May I again raise a question of hearsay?

Mr. Wilson at that time had no relationship with Interhandel, and this witness is about to testify to a conversation with

94 Mr. Wilson.

I object to it as hearsay.

THE COURT: I will overrule the objection.

BY MR. O'DONOGHUE:

Q Would you go ahead and answer then, Mr. Schmitz?

A Thank you, yes. I reported back to Mr. Wilson.

Q What do you mean "reported back to him"?



A Well, I was saying I went to his office and I told him -- he had known of my trip over there because he had been with me and Mr. Davies when I left. So when I came back, I told Mr. Wilson I would give Mr. Davies a report in <sup>the</sup> negative that my counsel to Mr. Davies would be, that inasmuch as I have been told in Switzerland that I had -- didn't want to entertain any more overtures from American buyers, that my advice from Food Machinery was not to waste time and effort in pursuing this approach, and then I said to Mr. Wilson that as a result of my meetings in Switzerland, I had been informed by Dr. Sturzenegger and by Mr. Niederer and by Dr. Frey that they would like to ask him to please consider the possibility of being the man whom Interhandel would wish to designate as their solely mandated trustee to accept powers to deal with the Government.

Q What did he say in response to that?

A Well, he was -- he said nothing in particular. He said that -- I told him that I had been informed that the new control group in Interhandel was of the highest repute and that they had the backing of the Federal Government of Switzerland and that any representations made to me or to him by the Swiss in the period ahead could be relied upon, and that I would like him to please consider seeing these people.

Q What did he say to that?

A As I recall, he said he would do a little checking on this and think it over and that I should see him again.

Q Did you?

A Yes, yes.

Q Approximately when?

A This was about Christmastime.

MR. WILSON: Your Honor, do you understand my objection goes to this whole line?

THE COURT: That's right. Your objection goes to the entire line and the Court's ruling is the same.

BY MR. O'DONOGHUE:

Q You saw him around Christmastime of 1958?

A Well, no -- yes, I called him to wish him a Merry Christmas, et cetera, and I think I arranged to see him right after the New Year and told him I planned to go back to Switzerland, if I -- he was to find out -- make some checks in Washington whether or not the feasibility of this sort of approach would be acceptable to the Government people that he would talk to.

Q And thereafter did you have any further conversations  
96 with him?

A Yes.

Q At approximately this time or early 1959?

A In early 1959 I had a talk with him about it, and my recollection is that Mr. Wilson told me that he would cautiously proceed, step by step, to entertain and receive these people, and based on that I flew to Switzerland again.

97 Q During the time you were in Switzerland in December of 1958, was there any discussion with Dr. Niederer, Frey, Reinhardt or Dr. Sturzenegger, concerning compensation for you?

\* \* \*

98 Q Now, returning to early January of 1959, did you have occasion then to return to Switzerland?

A Yes, I did.

Q Where did you go?

A I went to Zurich.

Q And who did you meet there?

A I met with Dr. Hugo Frey. Also during this trip I met with Dr. Sturzenegger.

Q What did you -- what was your conversation with Dr. Frey?

A Dr. Frey stated to me that he had confidentially discussed this matter with Dr. Reinhardt and we discussed -- I told him that Mr. Wilson had based upon his comments that he had made in the United States that he would be prepared to receive Dr. Frey if he were to come over to the United States to discuss the preliminary bases to a possible approach to this matter, which was the possible acceptance by Mr. Wilson of a mandate to serve as Interhandel's trustee.

Q Were any dates discussed as to when you might meet?

99 A Yes, and I believe after that I cabled Mr. Wilson about the dates.

MR. O'DONOGHUE: Mark this, please.

THE DEPUTY CLERK: Plaintiff's Exhibit No. 11, marked for identification.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's Exhibit No. 11 for identification and ask you if you recognize that?

A Yes, I recognize this.

Q What is it?

A This is a copy of a cable received by me from Charles E. Wilson at the offices of Niederer and Kraft and Frey which was sent there to me care of their office as to the matter of the dates being satisfactory.

MR. O'DONOGHUE: I offer this.

MR. WILSON: No objection. No objection other than those that I made before that were overruled.

THE COURT: It will be received.

\* \* \*

BY MR. O'DONOGHUE:

Q Now, was any request made of you by them for anything to be done on behalf of Interhandel?

THE COURT: By "them", who are you referring to?

MR. O'DONOGHUE: By Dr. Frey.

THE COURT: Dr. Frey?

THE WITNESS: Yes. I was asked to go over to the United States to see Mr. Wilson and to report to Mr. Wilson as to all of the pre-conditions they had set forth as to how this had to be approached from the Interhandel side and to outline this to Mr. Wilson and prepare Mr. Wilson for the meetings coming in New York.

BY MR. O'DONOGHUE:

Q Did Dr. Frey come to New York?

A Yes, he did.

Q When?

A At the time of the dates indicated in the cable Mr. Wilson said were satisfactory dates, as I recall.

Q Now, when you returned to the United States, did you have any meetings with Mr. Wilson?

A Yes.

Q Before Dr. Frey arrived?

A Yes, I did.

Q And can you tell us what was discussed at those meetings?

101 A I did what I previously --

MR. WILSON: I hate to interrupt, but I am making the same objection.

THE COURT: The same objection and the same ruling by the Court overruling the objection.

THE WITNESS: Excuse me.

BY MR. O'DONOGHUE:

Q What was the discussions you had with Mr. Wilson?

THE COURT: Mr. who?

MR. O'DONOGHUE: Mr. Charles Wilson.

THE WITNESS: I called back and told Mr. Charles Wilson that I had been informed by Dr. Frey and again by Dr. Sturzenegger that Interhandel did not want to have any mention of Mr. Wilson's name in connection with this matter, and that they wanted no documentation as to the sought-after trusteeship, that in the event the trusteeship were not accepted in the final effort, that there would -- if Mr. Wilson declined it, that Interhandel did not wish to have it known that the effort had been made in the first place, because I told Mr. Wilson that the reason I was given for this was that a declining on the part of Mr. Wilson of the preferred trusteeship would be something which could damage the Swisses' stock position.

Q Dr. Frey, you say, came to the United States?

A Yes, he did.

102

Q When was that, approximately?

A I said approximately the dates that are on there.

Q To your recollection?

A Well, around the 26th or 27th of January of 1959.

THE COURT: 1959?

THE WITNESS: 1959, yes.

BY MR. O'DONOGHUE:

Q How long did he stay here?

A I think we had a series of three days of meetings at the Waldorf-Astoria Hotel. I had taken a suite of rooms there and we had --

Q For him?

A No, for the conferences.

Q And tell us about the conferences that were conducted?

A I had been asked to prepare an agenda for these conferences, and the conferences would go through the morning and we would have them in the afternoon, and we discussed specifically the level of the approach to resolving this problem.

I recall Dr. Frey stated to Mr. Wilson that his partners were representing the Swiss Government at The Hague and that this matter was the most important single international controversy, as far as Switzerland was concerned, in this century, and that Mr. Wilson had his personal assurance that Interhandel, in pursuing this desired preferred mandate, that

103 Mr. Wilson could know that there was absolutely no substance, no foundation whatsoever in any allegations that there could be any enemy ownership, control or taint, and that Switzerland and Interhandel's position was a matter of right and they would prevail in the final analysis.



I recall during these three days of meetings that Mr. Wilson was told in my presence that nothing would be done that could possibly result in embarrassment to him or the United States Government or to Interhandel, and that this had to be, because of its unique confidential relationship, nature, and required trust, that this matter which involved the controversy between Switzerland and the United States at The Hague, and which ultimately involved this long-pending litigation in the United States District Court, that this was a momentous matter and that Mr. Wilson could be confident that he could rely on the representations made that Interhandel would follow through faithfully in consummating the work towards getting him to accept these responsibilities.

Q Was any memorandum of that meeting prepared?

A I didn't hear the question.

Q Was any memorandum of that meeting prepared?

A Well, following the meeting, following the three days of meetings, in my presence Dr. Frey dictated a memorandum to Mary Nugent at Nugent and Nugent, 280 Madison Avenue, of which I was given a copy, and which I went over with to Mr. Wilson's office with Dr. Frey and thereafter Dr. Frey delivered a copy to Mr. Wilson.

THE DEPUTY CLERK: Plaintiff's Exhibit No. 12, marked for identification.

BY MR. O'DONOGHUE:

Q I will show you Plaintiff's Exhibit 12, for identification, and ask you what that is?

A This is the memorandum which Dr. Frey delivered to Mr. Charles E. Wilson in my presence.

Q He delivered it to him?

A Yes.

Q Then?

A Yes, he delivered it to him.

MR. WILSON: My objection is the same that occurred earlier, that this is between parties who could not bind Interhandel.

THE COURT: Overrule the objection. It will be received.

\*\*\*

105

BY MR. O'DONOGHUE:

Q I show you Plaintiff's 13, for identification, and ask you what that is?

A Well, it's a copy of the letter that I mailed to Dr. Frey, dated February 3, 1959. It speaks for itself.

\*\*\*

106

MR. O'DONOGHUE: May this be marked 14, for identification?

THE DEPUTY CLERK: Plaintiff's Exhibit No. 14, marked for identification.

\*\*\*

BY MR. O'DONOGHUE:

Q Did you receive an answer to that letter of the 3rd of February that was marked for identification but not admitted into evidence?

A Yes, I received an answer. This letter of February 6th.

Q Plaintiff's Exhibit 14?

A Which also indicates what the enclosure was.

MR. O'DONOGHUE: Well, I offer this in evidence.

MR. WILSON: This paragraph thanks him for the information which was in the other letter which has not been identified. The second paragraph speaks of the pleasure of meeting  
107 him.

If the letter is offered simply to corroborate a contact, I have no objection. If it is offered for any other purpose, I object to it.

THE COURT: What is the purpose of the offer, Mr. O'Donoghue?

MR. O'DONOGHUE: It establishes that meeting and it establishes the contact between this representative of Interhandel, as I understand it.

THE COURT: You don't object to that, do you?

MR. WILSON: Of course, I understand -- I wouldn't agree he was representative of Interhandel. But taking Mr.

O'Donoghue's version of self-serving, I have no objection to the purpose for which it is offered.

THE COURT: It will be received.

\* \* \*

MR. O'DONOGHUE: May this be marked 15, for identification?

THE DEPUTY CLERK: Plaintiff's Exhibit 15, marked for identification.

103

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 15, for identification, and ask if you received that? If you can identify it?

A Yes, it's a letter I received from Dr. Frey dated March 3rd.

MR. O'DONOGHUE: I offer this.

MR. WILSON: As to 15, my objection simply goes to the unauthorized correspondence.

THE COURT: Very well. I will overrule the objection and it will be admitted in evidence.

\* \* \*

BY MR. O'DONOGHUE:

Q Now, that letter refers to and states that Dr. Frey had not heard from you or Mr. Wilson for some time --

MR. WILSON: What was the date of that letter?

MR. O'DONOGHUE: March 3.

BY MR. O'DONOGHUE:

Q Did you have occasion to reply to that letter?

A I couldn't -- my answer would be affirmative, owing to the fact that when I would get a letter like that, I would reply. My answer is yes.

109

THE DEPUTY CLERK: Plaintiff's Exhibit 16, marked for identification.

\*\*\*

BY MR. O'DONOGHUE:

Q I show you that exhibit, and ask you if you can identify that?

A Yes, this is a letter of reply to Dr. Frey.

THE COURT: What did you say?

THE WITNESS: This is a reply of my own to Dr. Frey dated March 7, 1959.

BY MR. O'DONOGHUE:

Q It's a copy of it?

A I gather -- yes, it's a handwritten copy of it. I don't know where that came from.

Q What was your custom in respect to correspondence? Did you with any of these Swiss people, did you write them by typewriter or longhand?

A Very often -- it varied. I would do it alone. I wouldn't dictate to a secretary or anything. I would write in longhand to keep it more confidential.

I would write a lot of longhand letters, and very often I wouldn't keep copies.

Q Did you sometimes keep copies of longhand letters?

110

A Yes.

Q Is this such a copy?

\* \* \*

THE WITNESS: I would say yes.

BY MR. O'DONOGHUE:

Q It is a copy?

A It is the text of what I sent him, so it would be a copy.

MR. WILSON: Same type of objection, if Your Honor please.

\* \* \*

111

THE WITNESS: It is the text of what I sent. As such, it would be a copy. It would be a duplicate text of what I sent.

MR. WILSON: Did he say it is a duplicate?

THE COURT: When was it made, Mr. Schmitz?

THE WITNESS: The date is on it. If I could have it to answer the Court?

It was made at the time I was writing the letter to Dr. Frey, and it is the text of what I sent him.

MR. WILSON: May I ask a question or two, Your Honor?

THE COURT: Yes.

## VOIR DIRE EXAMINATION

BY MR. WILSON:

Q Mr. Schmitz, I read many of your handwritten letters, and you testified on some occasions you didn't keep copies.

When you kept copies, were you using a carbon underneath the original?

A No. No, I wouldn't.

Q Does that mean that you would write out twice, first the original to go to the addressee, and then an exact copy of  
112 it?

THE COURT: That is not the question here.

In relation to this letter, when was this done, and under what circumstances?

THE WITNESS: I simply can't recall. I couldn't give an answer that would tell right now whether I wrote two pages or whether I typed what I sent to him and this is a handwritten draft of what I typed.

I testified this is the text of what I sent him.

BY MR. WILSON:

Q But I have established from you --

A I feel I wrote this longhand and sent him another letter which may have been typed by me.

MR. WILSON: I am not assailing the authenticity of this, Your Honor. But I would like to be sure I established one fact.



BY MR. WILSON:

Q You did not make simultaneously a carbon when you wrote in longhand?

A ... No, I would not do that, Mr. Wilson.

\*\*\*

113 Without objection, it will be admitted in evidence as the next exhibit.

\*\*\*

MR. O'DONOGHUE: May this be marked the next exhibit for identification?

THE DEPUTY CLERK: Plaintiff's Exhibit 17, marked for identification.

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MR. O'DONOGHUE: I think it might be well if you would mark this slip 17-A or something of that kind.

THE DEPUTY CLERK: Plaintiff's Exhibit No. 17-A, marked for identification.

\*\*\*

BY MR. O'DONOGHUE:

114 Q Mr. Schmitz, I show you a carbon of a letter marked 17, Plaintiff's Exhibit 17, for identification, addressed to Mr. Charles E. Wilson, with 17-A, indicating that a copy was sent to you, and ask if you can identify that? Whether you received that?

MR. WILSON: Is that the March 10 letter?

MR. O'DONOGHUE: Yes.

\*\*\*

THE WITNESS: I can identify this. Yes. I received a copy of this. It is a letter written by Dr. Frey to Charles E. Wilson.

\*\*\*

110 MR. O'DONOGHUE: Well, this I take it has been received in evidence.

THE COURT: Received, yes.

\*\*\*

BY MR. O'DONOGHUE:

Q Was Mr. Wilson representing Interhandel in any way at this time, Mr. Schmitz?

A Which Mr. Wilson?

Q Oh, yes. That is a good question. Mr. Charles Wilson? I know Mr. John Wilson was.

A No, no, he was not.

Q Do you know what is referred to in the letter concerning a meeting with Mr. William Rogers, Attorney General?

A I don't think the letter refers to a meeting with Mr. Rogers.

MR. WILSON: How about "negotiations" with Mr. Rogers? That is what it says.

BY MR. O'DONOGHUE:

Q Did you participate in any such negotiations; do you know what they were?

\* \* \*

116 THE WITNESS: I didn't, no.

MR. O'DONOGHUE: May this be marked the next exhibit number?

THE DEPUTY CLERK: Plaintiff's Exhibit No. 18, marked for identification.

\* \* \*

BY MR. O'DONOGHUE:

Q Can you identify Plaintiff's Exhibit 18 for identification?

A Yes. It's a letter I received from Dr. Frey.

MR. WILSON: March 13th?

We have no objection to 18.

THE COURT: Are you offering 18?

MR. O'DONOGHUE: Yes, Your Honor.

THE COURT: Without objection, it will be received.

\* \* \*

117 BY MR. O'DONOGHUE:

Q Did you have occasion to meet Mr. John Wilson about this time?

A Yes, I did.

Q What was the reason for that?

A I was asked to go see him by Dr. Frey because of a false rumor that had been reported around Washington, and I received a telephone call from Mr. John Wilson at my home, and John Wilson asked me, I recall, whether or not Mr. Charles E. Wilson was active in this matter in Washington for Grace, and I said "No."

And I recall consulting with Mr. Charles E. Wilson, and I learned -- I was told that it had been alleged by Mr. Charles Percy, then the head of Bell and Howell, in the presence of President Eisenhower at the White House, that Mr. Charles E. Wilson was interested in helping Bell and Howell get this company.

Q Get what company?

A To get General Aniline Film.

And this is apparently, from what I gather from Mr. Wilson, gotten back some out from Dallas Townsend and from Dallas Townsend to John Wilson, and I received this telephone call from Mr. John Wilson asking me about it, so I made a date  
118 to come down to Washington and see Mr. John Wilson.

\*\*\*

Q What was the content of that conference or meeting with Mr. John Wilson?

A Well, Mr. Charles Wilson had told me he had written the Attorney General, Mr. Rogers, and as I recall, this was the substance of the so-called negotiations with Mr. Rogers,

and Mr. Rogers had received a letter from Mr. Charles E. Wilson and Mr. Wilson told me he had written the Attorney General and told him that he would not be interested in favor of any one single American company in this matter and that if he was to 119 serve to help resolve this, as I recall he would do so for no money at all and for the principles involved and in that he felt that it was a matter of honor and that he was in no way connected with any other company because he didn't like his name being used without his authorization.

Q This is what you told Mr. John Wilson?

A I came down and saw Mr. John Wilson and -- to convince Mr. John Wilson that Mr. Charles Wilson was not interested in any one buyer and that he was -- well --

I will tell you. I told Mr. John Wilson, as I recall -- we went to lunch. Mr. John Wilson took me to lunch. I think we went to some restaurant near his office.

And Mr. John Wilson told me of his arduous efforts in this matter, and as I recall Mr. John Wilson said that he himself had had difficulty getting to Attorney General Rogers through Dallas Townsend. And I recall I said to Mr. John Wilson that all these industry allies would use people's names and I wanted to assure him that all that Mr. Charles Wilson was interested in or I was interested in was helping Interhandel recover the premises there, and that there was no special

influence, favor or any of the sort. And if he thought Mr. Wilson was involved for Grace or anybody, I could assure him he wasn't.

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120

THE DEPUTY CLERK: Plaintiff's Exhibit 19, marked for identification.

\*\*\*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's 19, for identification, and ask if you can identify that?

A Yes, this is a letter from Dr. Frey to Mr. Charles E. Wilson dated March 24, 1959.

Q Is that correct?

A Is what correct?

Q That it is addressed to Mr. Charles Wilson?

A No, pardon me. It is addressed to me.

MR. WILSON: No objection.

THE COURT: It will be received without objection.

\*\*\*

121

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 20, for identification, and ask you if you can tell us what that is?

A It is a copy of a letter to me -- it is an original letter to me, from Dr. Frey, with an enclosure of a copy of a letter to Mr. Charles E. Wilson.

MR. WILSON: Date?

MR. O'DONOGHUE: April 6, 1939.

MR. WILSON: You are not identifying the letter of March 19 from Mr. Wilson to Dr. Frey?

MR. O'DONOGHUE: No, I don't have that. Maybe Dr. Frey has it.

MR. WILSON: May it please the Court, I should like to ask a question or two on the voir dire as to admissibility  
122 of 20.

THE COURT: You may do so.

\*\*\*

VOIR DIRE EXAMINATION

BY MR. WILSON:

Q Mr. Schmitz, you have been in contact with Mr. Charles E. Wilson frequently in the last year, haven't you?

A Repeatedly, yes.

Q And did he make his file available to you, sir?

A Well, his file was not made available to me. It was made available, without going through my hands, to my attorneys. I never saw it.

Q Did you, for example, ask him to give you a copy of Mr. Frey's letter of March 19 to him which is acknowledged in Mr. Frey's letter of April 6 to Mr. Wilson?

A I haven't asked him for it. My attorneys had the file. I haven't asked him for it.



Q I see.

Now, how long have your attorneys had, for example, Number 20?

A I wish you would ask them. They got it from Mr. Charles M. Spofford's office, Davis' Polk Wardwell Sunderland and Kiendl.

123 Q Mr. Spofford was Mr. Wilson's personal counsel in this matter, wasn't he?

A He was the trustee's personal counsel.

Q You don't know what effort was made to have a perfect continuity of this sequence of letters, do you?

A I don't know.

\*\*\*

124

(Whereupon, Plaintiff's Exhibit No. 20 was received in evidence.)

BY MR. O'DONOGHUE:

Q Plaintiff's Exhibit 20 refers to a proposed visit to New York from April 15 and 19 by Dr. Frey.

Do you remember whether in fact he came?

A He came.

Q And did you meet with him?

A Yes.

Q And did anyone else meet with him at that time?

A Mr. Charles E. Wilson. In my presence. Yes, to my knowledge.

Q And what discussions were carried on at that time?

A If I recall correctly, my recollection is that date-wise --

125 A My recollection is that Dr. Frey made this trip to inform Mr. Charles E. Wilson that the Union Bank of Switzerland had through him, he was at the closing, had sought to purchase all of Dr. Sturzenegger's shares in Interhandel, and he stated to Mr. Wilson and to myself in Mr. Wilson's office that he personally had been at the closing, that Union Bank had offered Dr. Sturzenegger the sum of 3600 Swiss Franks per share, and I recall him saying that Union Bank wanted to buy all of Dr. Sturzenegger's stock, and he stated that he knew that the Union Bank would have paid a higher price but that Dr. Sturzenegger didn't quibble one frank on price, and that --

Q Was there any discussion -- excuse me --

A And he stated to Mr. Wilson that inasmuch as Union Bank had now acquired to his knowledge control of Interhandel, that any further negotiations towards securing a trusteeship would have to be undertaken by Union Bank. Because they were in control of the company.

Q Was any discussion had about Mr. Wilson's representation of Interhandel?

A Yes, there was. As I recall, Dr. Frey stated that there had been a tender in Switzerland by Bache Company. And Bache Company was -- being an American brokerage firm they made

a tender in Zurich to buy control of Interhandel in Switzerland by purchasing Interhandel shares, and Dr. Frey used this visit, and in my presence, told Mr. Charles E. Wilson that he could be  
126 assured that the integrity of Swiss position would be maintained and that the control of the company would not gravitate to any inter-Swiss or American speculative groups.

He also, I recall, stated that there had been some word from Colonel Townsend along the way that the Assistant Attorney General in charge of the property had said that he complained that no one group controlled Interhandel and there was talk on the part of stockholder groups that one group should control Interhandel in Switzerland. So that Dr. Sturzenegger had agreed to sell Union Bank only enough shares to give it control but still decided to retain some interest, the remainder of interest.

Q Did Dr. Frey come over to this country -- or let me ask you this: How many times did Dr. Frey come to this country in the winter and spring of 1959 that you were aware of?

A I recall him being over here in 1959 in January, and at the time I just testified to. I think he was once over here in California, and stopped by on the way. I think he was in the United States, to my knowledge, three times.

Q Did you see him three times?

A Yes.

MR. O'DONOGHUE: May this be marked?

THE DEPUTY CLERK: Plaintiff's Exhibit No. 21, marked for identification.

\* \* \*

127 THE DEPUTY CLERK: Plaintiff's Exhibit 21-A, marked for identification.

\* \* \*

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you what has been marked as Plaintiff's Exhibit 21 and 21-A, for identification, and ask you if you can identify that?

A This is a letter of June 4 to Mr. Charles E. Wilson, informing him of the Bache tender.

MR. WILSON: 1939, I assume.

THE WITNESS: June 4, 1939.

And also telling him of the acquisition of stock and the price and the shares and so forth. It speaks for itself.

THE COURT: Who is the letter from?

THE WITNESS: Dr. Frey to Mr. Charles E. Wilson.

BY MR. O'DONOGHUE:

Q Did you receive a copy of this?

A This is my copy. It has the tag on there as an enclosure from Neiderer, Kraft & Frey.

123 MR. WILSON: No objection.

THE COURT: Without objection, it will be admitted as Exhibit 21 and 21-A.

\* \* \*

MR. O'DONOGHUE: Your Honor, I suggest that that letter indicates there was control by Dr. Sturzenegger up until approximately this date.

MR. WILSON: Are you now arguing this point? I am not objecting to it. If the Court wants to hear argument on this point, I would like to be heard, too.

MR. O'DONOGHUE: I think you have been heard and the Court has ruled in your favor. I suggest that this indicates that during this period up until June of 1959, there was control or representation by Dr. Sturzenegger's attorney and Dr. Frey on behalf of Interhandel, that Dr. Sturzenegger had the control of the company.

It was only because the control had thus recently ended, that he was suggesting that he could no longer carry on direct negotiations with Mr. Schmitz, that he should deal with Dr. Schaefer.

MR. WILSON: If Your Honor please, the letter is the ipse dixit of Mr. Hugo Frey, which is not necessarily proof of the fact. Also in the letter Dr. Frey thanks Mr. Schmitz on behalf of the Sturzenegger group. It doesn't thank him on behalf of Interhandel.

If we are at this point going to debate what control Sturzenegger had, I will be delighted to take it on.

THE COURT: The Court has ruled and I will adhere to my former ruling in the matter.

BY MR. O'DONOGHUE:

Q Mr. Schmitz, during this period of the 1950's up to 1959, did you have any other activities other than what has been testified to by you here on the stand?

\* \* \*

130

BY MR. O'DONOGHUE:

Q Could you describe what some of those activities were, what your principal activity was?

A Well, I am an inventor, and scientifically oriented in the area of physical chemistry. I was actively applying for patents, United States patents, in the fields of biocides, colloidal biocides, which could be applicable in systems involving the soap industry, detergents, agency, seed sterilization, and in cellulosic garments for biocidal purposes, that is, for sanitary use, sanitary deodorants, soaps.

Q How long was this patent application pending?

A Twelve years before the patent issued.

Q When was the application made?

A 1949. The first application. And the patent issued in 1962 in the United States. One issued in Canada earlier than that.

Q Had you -- did you work on any other inventions in this period?

A Yes.

Q Could you describe briefly what your activities were in that respect?

A Well, of course my activities in this area involved expenditures of large amounts of time and money going to Washington and having --

Q No, but what were you doing aside from this particular patent that you have just described? Were there any other inventions that you worked on?

A That I was working on, yes. There were inventions in the area. I have a concept in electrical reliability systems which I have had in my mind for about ten years in order to provide fusing for high tension lines to save lines.

Q Did that require any investigation, any laboratory work, any tests or anything of that kind?

A Well, it did, but not nearly as much as the biocidal matter which was actively in the patent office, and I had a number of actions in the Patent Office in Washington and I had to use Foster Snell and Hudson Laboratories and hire bacteriologists and laboratory specialists to take the numerous tests the Government required which were standard tests and evaluation of germicidal soaps and biocides generally.

Q You say a patent did ultimately issue in 1962?

A Yes. Yes, it did.

Q Do you know the number of the patent?



A I have the patent with me here in Washington. The actual letter of patent -- the number escapes my recollection. The serial number.

\* \* \*

145 Q Mr. Schmitz, I believe the last thing we discussed in relation to Interhandel was the letter of June 4, 1959. Did you have any other communication with Dr. Frey at or around that time?

A Yes. He spoke to me in New York.

Q Subsequent to June 4?

A I recall that I had a meeting with Dr. Frey in New York. I think he was coming back from California, and I think it was subsequent to that letter, and he took me to lunch at the Waldorf-Astoria.

Q What did he say?

A He stated to me that he wanted me to keep Mr. Wilson's interest alive in the consistency of the pursuit of the Preferred Trusteeship on the part of the Swiss, that he wanted me to be sure that the Eache tender would not come  
146 to fruition, and he asked me, in the process of keeping Mr. Wilson's interest active on the merits of the Swiss's cause, that I also keep myself available to follow the proceedings before the Senate Judiciary Subcommittee, the so-called "Johnston Committee," which was investigating the

Trading With the Enemy Act. He also asked me to ask Mr. Wilson to do whatever he could do in opposition to the indicated attempts by Senator Keating and Congressman O'Brien, I think it was, to get a bill passed to compel the sale of their property.

Q Did you do anything in connection with those hearings?

A I attended the hearings. I recall seeing Mr. John Wilson there. I attended the hearings with Mr. Gordon Echol, and I also had a meeting after the hearings with Mr. Harlan Wood, who was then counsel of the Committee.

Q Did you make any reports when you were in Switzerland about---

A No. At the meeting I had at the Waldorf with Dr. Frey, he told me that I should come to Switzerland after the eventuality had been clear as to whether or not the Johnson Committee would pass the legislation that was proposed and after the Bache tender was no longer in effect, and that I should come to see them in Switzerland.

147

Q Did you do that?

A Yes, I did that.

Q When?

A I went to Switzerland just prior to the 23rd of October 1959. I went to Zurich.

Q Whom did you go to see there?

A I went to see Dr. Frey.

Q What was your discussion with him?

A Well, I was given an appointment to see him, and I told him that I was back, consistent with our prior understanding, and he said that he would put a call in to somebody at Union Bank and tell them that I was there so in my presence, he phoned to Union Bank and said that the "Gentleman is here on the matter we discussed," and if they wanted to see me that I would be available. After the conversation was over with, he told me that he had talked to Mr. Bruno Saager, whom he told me was General Manager of the Union Bank.

Q Did you know Mr. Saager before that?

A No.

Q What happened after that telephone conversation?

A Appointment was made that I would see Mr. Saager. I think I saw him on or about the 23rd of October. The next day, I think it was.

Q Did you have any discussions with him?

148 A Yes. I was ushered into his office. Mr. Saager was most pleasant, and he said to me that he was glad to meet with me. He said that he had charge of, as I recall, the portfolio, and that he had been instrumental in the idea of Union Bank buying out the control of Interhandel; and I

recall that Mr. Saager stated to me that he felt that Switzerland, the Swiss banks, were really good friends of the United States on dollar stability and currency matters, and that this seizure was unjust, and that he felt confident, that one reason he really wanted to see Union Bank make this investment and take control of the company was that he believe that with proper handling that the United States Government -- if the United States Government knew that this cause was just, and it was properly handled as a business matter, et cetera, that it would be recovered; and I recall that he deplored some of the activities that occurred in Switzerland over the years.

I also recall that there was some discussion about the fact that a lot of people placed very large values on the company.

Q Was there any discussion--- Excuse me.

A He also told me that he was not an officer or director of Interhandel, but that Dr. Alfred Schaefer was the boss, and that Dr. Schaefer was the chief General Manager of the Union Bank and the head of Interhandel.

149 Q Is that all that was said?

A No, it was not all that was said. He asked me if I would be available to meet with Dr. Schaefer in a few days, and made an appointment for me to see Dr. Schaefer on the 26th of October, three days later.

Q Did you just wait, then, for three days to see him?

A Yes. I went back to Basel, and I recall taking a train back from Basel early in the morning.

Q The 26th of October.

A Yes.

Q Did you then meet with Dr. Schaefer on that day?

A I went to Union Bank and I went up to the floor on which Dr. Schaefer's office was, and I was ushered into a small ante-waiting office or ante-chamber, by a man, a page or an usher of some kind.

Q Did you meet with Dr. Schaefer?

A Yes, I met with Dr. Schaefer. I recall Dr. Schaefer came into the room where I was sitting alone. He invited me cordially into his office, expressed how glad he was that I was there. I recall that he went behind his desk and we sat down and I recall saying to Dr. Schaefer that I had reason to know that he had been confidentially informed, as it were, the other members of the Executive Committee, of Mr. Charles E. Wilson's name in connection with the idea to obtain trusteeship for Mr. Wilson to be for the benefit of  
150 of Interhandel. I recall that Dr. Schaefer stated that he would like me to orient him, tell him about the antecedent activities, the pre-conditions that were necessary, that I had found with respect to this matter.

I recall stating to Dr. Schaefer that Dr. Sturzenegger and Dr. Frey had insisted and Interhandel insisted that for its own protection that nothing be divulged about this activity; and I recall Dr. Schaefer saying he had a great burden, that this was the most important thing for Switzerland, and that his duty was to recover this, and that this would eventually have to go to The Hague because it was a matter of honor for Switzerland and a matter of great importance to his bank. And I recall Dr. Schaefer said that he simply would not subject himself to the kind of bad treatment that had been accorded other representatives of Interhandel.

I recall that Dr. Schaefer said to me that Dr. Pfenninger, or Mr. Pfenninger, from Swiss Bank Corporation, had very little knowledge of the background of this, and I recall that Swiss Bank Corporation had little or no stock interest in it, and I recall he stated to me that Dr. Pfenninger had been in contact previously with Colonel Dalas Townsend, or Mr. Townsend, and that Dr. Schaefer felt the matter was so important that he could not afford to expose the bank or  
151 the company or his government to kind of adverse publicity which had existed before, that he felt he had a right to deal at the top, and he should only deal at the top in this matter. And if I recall, Dr. Schaefer said to me that the position of the three major Swiss banks on

the Executive Committee of the Board and the backing of the Swiss Bankers Association and the backing of --- He told me he was a friend of the President of Switzerland, Dr. Petitpierre, and that this was a great difficulty, and it would have to eventually go as far as The Hague; but that by all means, if an honorable recovery could be made in the United States, that this should be done.

But I recall saying to him that, from my years of experience with the matter, that I had been an opponent of Dr. Germann's, or Mr. Germann's, and that I did not like the tactics of American companies that were trying to force themselves into the picture, and that I told Dr. Schaefer that the matter, as far as I was concerned, was one where the validity of the Swiss position could honorably be set forth to the United States Government and that the United States Government should be not pressured into making decisions on new high policy without the chance to be oriented on the matter fully.

152 I told him that I had great difficulty in working on this for years because of the fact that my name was associated with my uncle. My uncle had been accused of being a war criminal, and Sturzenegger, as an old friend, insisted that nothing be put down which could come to light to make another failure for this Interhandel, and that I was put under the obligation to carry out my work under this



condition, and that I had been willing to risk my time and my money to try to do this.

But I told Dr. Schaefer that this would be very risky for me if it was not done in a manner that was directly in accordance with what my experience had showed to be the absolutely necessary pre-conditions, and my knowledge of Mr. Charles E. Wilson since 1953 made it absolutely imperative that we could not put his reputation on the line in this matter and expose him, or anyone, to the accusations that he, as a former high-ranking Cabinet official of the United States Government, would be associated in a manner that could be in any way involved in accusations of Nazi control, enemy control.

And I said that I was completely convinced that the only way that the Swiss could get clear and valid title was that if they discharged all their obligations to the United States because this litigation had been pending long years. I knew John Wilson had worked hard, and there was a procedural  
153 dilemma, and that I knew there were equities of the United States that would have to be satisfied out of the years of struggle to prevent the overwhelming of the Swiss, and that I would want him to know that Mr. Charles E. Wilson, by putting his reputation on the line as a possible trustee would do so only if he could represent to the White House that, as former Defense Mobilizer of the

United States and one who had been an Assistant to the President of the United States, that this company, the Swiss company, was not tainted with enemy control.

Q What did you suggest that Mr. Wilson, Mr. Charles Wilson, might do?

A Well, I told Dr. Schaefer that the activities that I had been undertaking in order to get Mr. Wilson to consider the possibility of accepting a mandate as trustee, that Mr. Wilson, of course, would have to take on these powers and trust, and that these powers and trust would be a great responsibility for a man of his wealth; that his reputation would be there, and that Mr. Wilson would have to have absolute irrevocable powers to settle, sell and negotiate with the Government to a final conclusion the entire matter in the United States of America.

And I told Dr. Schaefer that under no circumstances could Mr. Wilson be expected to take on these powers if he  
154 did not have full and complete authority to secure clear title for them on the basis whereby he knew that as trustee, he would not ever be sur-charged, because Mr. Wilson was going to put his reputation on the line for Switzerland -- and I recognized the effort of Interhandel to put the heads of the three big banks on the Executive Committee of the Board with the backing of the Swiss Government at The Hague; that

likewise, the willingness of Mr. Charles E. Wilson to serve and to use his good offices at the White House and with other high officials of the Government was something, so far as I was concerned, that was priceless; and that Mr. Wilson could not be put in a position to exercise such powers without being free from ever any question of being sur-charged. He had to have a complete right and the imperative duty to discharge all these obligations.

Q Was there any discussion of any possible compensation for Mr. Wilson?

\* \* \*

THE WITNESS: Yes. I am answering the question. There was.

155

BY MR. O'DONOGHUE:

Q What compensation was proposed for Mr. Wilson?

A Well, there was not to be any compensation for Mr. Wilson at all. I pointed out to Dr. Schaefer that Mr. Wilson would, based upon representations and Mr. Wilson's years of study of this matter and his talks that I personally had been informed of at the highest level, and that Mr. Wilson would serve as trustee for no fee, even though I knew that normally a trustee would get 5 or 6 percent.

Q Was there any discussion of any compensation for you?

A Yes. Dr. Schaefer brought up the matter. My meeting with Dr. Schaefer went a good two hours in the first part of the day, and I stayed there the rest of the day, and Dr. Schaefer said to me: "Mr. Schmitz, if you could only bring this about for us! If you could only get Mr. Wilson to accept these trust powers, we will be most generous with you."

I said, "What would you mean by 'most generous'?" I said, "There has been talk of 3 percent, 2 percent, and I said, "The Blair Holding Company's deal was 3 percent."

Dr. Schaefer said, "Mr. Schmitz, the trustee will be paying these things out of the proceeds in the United States." He said, "If you are willing to wait, and if you  
156 are willing to do all this for us, we will pay you such a fee."

I said, "The most generous fee, in my opinion, would be more than 5 percent, but I said, "In previous dealings over the years," I said, "to Interhandel's knowledge, I have gotten at least 5 percent."

Dr. Schaefer said, "Well, there is no way in which Interhandel could pay me this 5 percent with what they had. It would have to be a matter with relation to recovery of this property in the United States," and that if I would be willing to have this come out of this, defer the payment and wait, that I would be assured of such a thing.

He said that I could rely upon the fact that Interhandel would faithfully abide by the pre-conditions that I set forth, and would pursue the acceptance of this trust desired by them as I would govern, and that they would not allow one word of this to leak out unless and until Mr. Wilson would accept. And that if Mr. Wilson did not accept, of course, Interhandel would owe me nothing.

The condition was that if Mr. Wilson did not accept, there should be no word ever that there ever was to be such an attempt to get this trust.

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158

THE WITNESS: So, during the course of the meeting, Dr. Schaefer asked me whether I accepted on this basis, that it might have taken me years to see this come through, and Dr. Schaefer asked me if I would please draw up for him a Memorandum as to all the pre-conditions and especially the hundred percent security under this relationship of trust, the confidence that existed, and would I please go into an office and there draw up, for him, a Memorandum of that date which would delineate what I advised him would be the absolute prerequisites to the establishment of a trust, that no mention should be made of Mr. Charles E. Wilson's name.

I went, thereupon, to an office that was provided for me, and somewhere along the line I was introduced to a

confidential secretary by the name of a Miss Fritz, and I recall sitting in the office alone and drafting up a Memorandum of that date. And I recall that while I was in that office that <sup>(Mr. Saunder)</sup> Mr. Saager came in, and he brought with him Dr. Ulrich Wehrli, whom he introduced to me. I may or may not have met Dr. Wehrli back in the forties.

159 He said Dr. Wehrli wanted to talk to me, and Dr. Wehrli came to me and asked me whether or not he could possibly have me introduce him in the United States to my father. I looked a little--- I mean, I wondered why; and he said to me that it was his feeling that the antecedents of the American management of General Aniline and their conduct prior to the war, and the purposes for which this company was formed and operated would constitute a very deep basic position from which the Swiss would be in the strongest possible position to communicate to officials of the Government the real nature of the corporation prior to seizure, and that this would be of the greatest help in any recovery attempt.

I told him that I would consider this. And after completing the Memorandum, it was typed up. And when I had delivery of the typed Memorandum, I went back to Dr. Schaefer's office later in the day, and I went up and we had a discussion of the Memorandum, went over it point by point, and I delivered it to him there. And I recall that Dr. Schaefer

assured me that I could rely completely on the absolute conduct that would be set forth, and that the Swiss would not deviate one bit from this basis to approach this trusteeship.

THE CLERK: Plaintiff's Exhibit No. 22 marked for identification.

\*\*\*

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you Plaintiff's Exhibit 22 for identification and ask you if you can tell us what that is.

A Yes. This is my Memorandum to Dr. Schaefer of the  
160 26th of October 1959.

Q Where was that written?

A That was written in the Union Bank of Switzerland, in Zurich.

Q Was it given to Dr. Schaefer that afternoon?

A It was given to him by myself in his office.

MR. O'DONOGHUE: I want to offer this, your Honor.

MR. WILSON: (Examining) No objection.

THE COURT: It will be received in evidence.

\*\*\*

BY MR. O'DONOGHUE:

Q Mr. Schmitz, what did you do after having delivered a copy of that Memorandum to Dr. Schaefer?

A Well, I took my leave of Dr. Schaefer, and I went back to the United States and made an appointment immediately



to see Mr. Charles E. Wilson. I went to see Mr. Wilson and I reported to Mr. Wilson on all the details of my meeting with Dr. Schaefer. I delivered to Mr. Charles E. Wilson a copy of the Memorandum of October 26th.

THE CLERK: Plaintiff's Exhibit 23 marked for identification.

161

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you Plaintiff's Exhibit No. 23 for identification and ask you if you can identify it.

A Yes. This is a letter I received from Dr. Schaefer which thanks me for getting the Memorandum of October 26th.

MR. O'DONOGHUE: I offer this in evidence.

MR. WILSON: No objection.

THE COURT: Without objection, it will be admitted in evidence..

\*\*\*

BY MR. O'DONOGHUE:

Q Did you tell Mr. Wilson the result of your conferences with Dr. Schaefer?

MR. WILSON: You said, "Did you tell Mr. Wilson?"

BY MR. O'DONOGHUE:

Q I say, did you tell Mr. Charles Wilson the result of your conferences with Dr. Schaefer?

A Yes, I did.

Q Did he then indicate--- Were you authorized by Dr. Schaefer to ask him to become trustee?

162 A Well, yes. Dr. Schaefer commissioned me to undertake to try to get him to accept this trusteeship, along the line of the October 26th Memorandum. I told Mr. Wilson that my impression was that the positions of Union Bank in control of Interhandel would be as reliable and consistent with the ultimate purposes as had heretofore been my experience with the Sturzenegger situation over the years; and that I was confident that Mr. Wilson could rely on all of the representations, and that they would abide by the outline of the basis, and that he would be offered a complete power of trust which would be irrevocable, and that they would never deviate from this; and that otherwise, they would be willing to go to The Hague, World Court of Justice, so that his efforts in talking to the United States Government in order to achieve not only a rapprochement, but a consideration, an honorable recovery of Interhandel for would not be wasted.

Q On what dates, if you can remember, and how many times did you meet with Mr. Wilson in this period?

A I would meet him in this period usually more and more times a week. Sometimes it would be a week, sometimes I would not. But I think I met with him hundreds of times, hundred of times.

Q I mean, in this period of November 1959.

A Well, I would be speaking to him on the phone; I would meet him at his office at Scarsdale, or he would indicate to me two or three times a week. I would have to look at the record to know exactly when.

163 Q Was there any talk of a meeting between him and Dr. Schaefer or other representatives of Interhandel?

A Yes. Dr. Schaefer indicated to me that he would like very much to have me prevail upon Mr. Charles E. Wilson to come to Paris, France to meet him. The reason a place like Paris was picked was that Mr. Wilson -- Of course, this was a very, very sensitive international matter, and Mr. Charles Wilson was a world figure and Dr. Schaefer was a very important Swiss banker, and the matter was of such a sensitive nature that the Swiss told me that they did not want to expose a meeting to speculators and other people who might try to destroy the effort to get Mr. Wilson to accept.

Q Did you have any telephone conversations with Dr. Schaefer in the period toward the end of '59?

A I had Trans-Atlantic telephone conversations with Dr. Schaefer in that period of time, but generally, it was left up to me here in the United States to use my judgment, to exercise my best efforts to prevail upon Mr.

Wilson and to guide him and to guide the Swiss together toward the realization of these effective trust powers; and I don't think that I used the Trans-Atlantic phone if it was a matter of importance, I would fly to Switzerland instead of just telephoning him. It would be so important that I  
164 would do that.

THE CLERK: Plaintiff's Exhibit 24 marked for identification.

\* \* \*

BY MR. O'DONOGHUE:

Q Did you have correspondence with Dr. Schaefer?

A Oh, yes.

Q Have you finished your answer?

A Yes.

Q I show you Plaintiff's Exhibit 24 for identification and ask if you can tell us what that is.

A Yes. This is a letter of mine to Dr. Schaefer saying that---

MR. WILSON: I object.

THE WITNESS: It speaks for itself.

BY MR. O'DONOGHUE:

Q What is the date?

A November 10, 1959.

MR. O'DONOGHUE: I offer it in evidence.

THE COURT: Without objection, it will be received.

\* \* \*

THE CLERK: Plaintiff's Exhibit No. 25 is marked for identification.

165

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit No. 25 for identification and ask you if you can tell us what that is.

A This is a letter from Dr. Alfred Schaefer to me, of that date.

THE COURT: What's the date?

THE WITNESS: November 9, 1959.

MR. WILSON: No Objection.

THE COURT: It will be received in evidence.

\*\*\*

MR. O'DONOGHUE: Mark this, please.

THE CLERK: Plaintiff's Exhibit No. 26 was marked for identification.

\*\*\*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 26 for identification and ask you to tell us what that is.

A It is a letter of December 1st, 1959 to Dr. Schaefer signed by me.

THE COURT: Signed by whom?

THE WITNESS: Signed by me and contains a Memorandum to Dr. Schaefer of December 1st of mine.

166

MR. WILSON: No objection.

THE COURT: Without objection, it will be received in evidence.

\*\*\*

THE CLERK: Plaintiff's Exhibit No. 27 marked for identification.

\*\*\*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 27 for identification and ask you if you can tell us what that is.

A It is a letter from Dr. Alfred Schaefer to me dated December 9, 1959.

MR. O'DONOGHUE: I offer this.

MR. WILSON: No objection.

THE COURT: It will be received in evidence.

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167

THE CLERK: Plaintiff's Exhibit 28 marked for identification.

(Plaintiff's No. 28 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 28 for identification and ask you what it is.

A A telegram that was sent to me from Dr. Schaefer of Bank Union.

MR. WILSON: The date?

THE WITNESS: December 5, 1959.

MR. O'DONOGHUE: I offer it in evidence, the telegram, your Honor.

\*\*\*

THE COURT: Without objection, it will be received.

(Plaintiff's No. 28 was received.)

BY MR. O'DONOGHUE:

Q Had Mr. Charles Wilson at this time indicated a willingness to meet with the Union bank officials, the Interhandel officials?

A Oh, yes. He had indicated a willingness to meet. He told me he was checking out very thoroughly the bases. He said he would never consider either of accepting any possible  
168 trusteeship unless it was absolutely air-tight, and he told me that, therefore, he would not accept it unless he was sure the Government would be receptive to it, have no opposition to it.

Q Had he indicated any intention of accepting the thing?

A No. He had indicated interest in discussing the matter. He weighed every step day by day.

MR. O'DONOGHUE: The next number.

THE CLERK: Plaintiff's Exhibit No. 29 marked for identification.



(Plaintiff's No. 29 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 29 for identification, and ask you if you can tell us what that is.

A It is a letter of mine to Dr. Schaefer dated January 5, 1960.

MR. WILSON: No objection.

THE COURT: Without objection, it will be received.

(Plaintiff's No. 29 received.)

BY MR. O'DONOGHUE:

Q Was there any reason for writing this letter at this particular time?

\* \* \*

169

THE COURT: I will overrule the objection.

THE WITNESS: It had been impressed upon me in Switzerland by Dr. Schaefer that no mention was to be made of Mr. Wilson's name or of the subject matter of this trust, or what the objects were of my activities, so that I had to let Dr. Schaefer know that Mr. Wilson was proceeding and was taking steps in his own discretion, as he saw fit, with people in Washington; that I had been informed by Mr. Wilson that a high-level contact had been made which meant Mr. Wilson, from the Government side, he would be willing to take the next step to proceed. It was a letter to encourage Dr. Schaefer that I was making progress.

MR. O'DONOGHUE: Thank you.

THE CLERK: Plaintiff's Exhibit No. 30 marked  
for identification.

(Plaintiff's Ex. No. 30 marked.)

\* \* \*

170 Q I show it to you, Mr. Schmitz, and ask if you can  
identify that.

A Well, this is what it states is a copy of a letter  
mailed to Dr. Schaefer on January 14, 1960.

MR. WILSON: No objection.

\* \* \*

171 THE COURT: All right. As I understand, there is  
no objection to the proffered exhibit. It will be received.

MR. WILSON: No objection.

(Plaintiff's Ex. No. 30 received.)

THE CLERK: Plaintiff's Exhibit No. 31 marked for  
identification.

(Plaintiff's Ex. No. 31 marked.)

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you what has been marked Plaintiff  
172 Exhibit 31 for identification and ask you if you can tell  
us what that is.

A It is a letter from Dr. Alfred Schaefer to me thanking me for my friendly letter of the 14th, which I have. It speaks for itself.

\*\*\*

THE COURT: What is the date?

MR. O'DONOGHUE: 23rd of January 1960.

I offer this in evidence, your Honor. It is in German. I only have a partial translation, and I think the same situation applies to Mr. Wilson.

\*\*\*

THE COURT: It will be received, without objection.

(Plaintiff's No. 31 was received.)

\*\*\*

173 THE CLERK: Plaintiff's Exhibit No. 32 is marked for identification.

(Plaintiff's No. 32 marked.)

BY MR. O'DONOGHUE:

Q I show you, Mr. Schmitz, Plaintiff's Exhibit 32 for identification dated February 2, 1960 and ask you if you will tell us what that is.

A This is a copy of a letter of mine to Dr. Schaefer at Union Bank of Switzerland dated February 2, 1960.

\*\*\*

THE COURT: Very well. It will be received.

(Plaintiff's No. 32 received.)

\*\*\*

174

THE CLERK: Plaintiff's Exhibit No. 33 marked for identification.

(Plaintiff's Ex. 33 marked.)

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you Plaintiff's Exhibit No. 33 for identification and ask you if you recognize that.

A This is a letter addressed to me dated 5 February 1960 signed by Dr. Schaefer, President and General Manager of Union Bank.

MR. O'DONOGHUE: I offer Plaintiff's Exhibit 33 for identification.

THE COURT: What's the date on the exhibit?

MR. O'DONOGHUE: It's dated February 5, 1960. It's in German, but there is a translation attached, which I believe we have agreed on.

MR. WILSON: It's agreeable. No objection.

THE COURT: Very well. Without objection, it will be received in evidence.

(Plaintiff's No. 33 received.)

175

BY MR. O'DONOGHUE:

Q Mr. Schmitz, we have been introducing correspondence between you and Dr. Schaefer in the first six weeks or so of 1960. Where were you during that period?

A I was living home, Greenwich, Connecticut, and in and out of New York City.

Q What were you doing in and out of New York City?

A I was concentrating exclusively on this work to get Mr. Wilson to accept the trusteeship mandate which was to be offered him.

Q How often did you meet with him for that purpose?

A Whenever the occasion demanded. Sometimes I would see him in the evenings in Scarsdale, and usually in the mornings, and of course, he would sometime be out of town, so I would say I would be with him twice a week certainly, if not more.

Q Did you bring to his attention this correspondence you were having with Dr. Schaefer?

A Constantly. I kept him informed of every---

Q Did you at any time in February go to Switzerland?

A Yes, I did.

Q Do you remember what part of the month you went?

A Well, I don't remember, no, what part of the month.

176 I just remember what the weather was like, so I don't think it was too early. It was starting to be pleasant in Switzerland, so I don't remember exactly what part of the month -- towards the middle of the month.

THE COURT: Towards the middle of February?

THE WITNESS: Towards the middle of February, yes.

BY MR. O'DONOGHUE:

Q What was the occasion of your going to Switzerland?

A I went to Switzerland to confer with Dr. Schaefer and to report to him on the efforts being made, and to try to arrange --- I went over there and I started---

Q Did you tell him you were coming?

A I don't know whether I did or not. I think I had reason to go. I don't think I did, no.

\*\*\*

THE WITNESS: Yes, your Honor. I don't recall having told him that I was coming.

BY MR. O'DONOGHUE:

Q Well, where did you go in Switzerland?

A I went to Zurich.

Q Whom did you see there?

A Well, I saw Dr. Schaefer primarily, but I also saw Mr. Saager when I went there and I also saw Dr. Ulrich Wehrli, as I recall.

177 Q Did you see them altogether at one time or how was that?

A Usually, not. No. I would see a fair amount of Dr. Ulrich Wehrli, and of course, I would see Dr. Schaefer separate from Dr. Ulrich Wehrli initially; and I would see Mr. Saager -- we would go out to lunch together.

Q What was the substance of your conferences, your talks with those gentlemen?

A As I recall, during that trip, I was asked to draft up the framework of Board Resolutions of Interhandel, and also I was informed that really the long-range hopes of Union Bank to retain investment participations in the United States, that they were eager to get the recovery, and I was told that the stockholders were putting-- the minority stockholders were putting a lot of pressure on, and that it meant a great deal for them, if I could hasten the acceptance by Mr. Wilson of the desired trusteeship.

Q You spoke about drafting certain documents. Tell us what those documents, or what you were attempting to do by those documents, and how you went about drafting them.

A Well, I would work partly at my hotel room and partly at the bank. I would always have access at the Union Bank with an office, and at their solicitation, I was asked to draw up drafts of their Board of Directors so that I could have them available, and take these drafts back to  
178 Mr. Charles Wilson, in New York, as expressions of the type of resolutions that Interhandel was prepared to make effective relating to his preferred trust power.

Q Did you draft them all by yourself?

A Yes, I did.



Q Did you consult with anybody about them?

A I was in constant dealings with Dr. Ulrich Wehrli, or I would be on occasion at Dr. Schaefer's office, and I would talk to Mr. Saeger. The drafts were drafts which they approved for me to take back to Mr. Wilson in New York, to indicate to him the formality of the undertaking towards drawing up powers to be appended to these drafts.

Q How long were you in Zurich on that trip?

A Well, I would have to look at a record to actually know. I would guess--

Q Don't you remember exactly how long you were there?

A Yes, I remember. I think I stayed nearly a week and a half, two weeks -- a week and a half.

Q Were these drafts typed, and if so where and by whom?

A I only remember them handwritten.

Q You only remember that they were handwritten.  
 They may have been typed, but I remember the handwritten ones that I took back. I think they were typed.

Q They were typed in Zurich?

179 A Yes, they were typed in Zurich as Draft A and B, I recall. No.

THE CLERK: Plaintiff's Exhibit No. 34 marked for identification.

(Plaintiff's No. 34 marked.)

MR. O'DONOGHUE: Just the "A" ones.

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you what has been marked Plaintiff's Exhibit No. 34 for identification and ask you if you can tell us what that is.

A This is a Draft "A" of Proposed Procedures to be Considered, Details During a Conference, and at that time the most simple, effective instruments and means to be provided to achieve objectives.

This is a Draft "A" with my signature on it dated February 29, 1960, typed at Union Bank of Switzerland in Zurich.

MR. WILSON: No objection.

THE COURT: Without objection, it will be received in evidence.

(Plaintiff's Exhibit No. 34 received.)

BY MR. O'DONOGHUE:

Q Were you told what to put into that draft, or were those your own ideas, or what?

A I was not told what to put into them. I was asked, 180 what I would have put in them, and I would discuss it with them, and I would then put into them what I felt should be in them, and I would get their approval of the drafts which I had approved before I went back to the United States.

THE CLERK: Plaintiff's Exhibit No. 35 marked for identification.

(Plaintiff's No. 35 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit No. 35 for identification and ask you if you can tell us what that is.

A Yes, I can. This is a Draft B typed at Union Bank of Switzerland, Zurich, drawn up by me, dated February 25, 1960 and delivered by me to Mr. Charles E. Wilson, in New York.

Q Who in Union Bank saw this draft?

A Well, I know I worked with Dr. Ulrich Wehrli and Dr. Schaefer saw the draft before I left.

Q Did either one of them indicate approval of it?

A Yes, indeed.

MR. WILSON: No objection.

THE COURT: Without objection, the next exhibit will be received in evidence.

(Plaintiff's Exhibit 35 was received.)

THE CLERK: Plaintiff's Exhibit 36 marked for identification.

181

(Plaintiff's Ex. No. 36 marked.)

BY MR. O'DONOGHUE:

Q I show you, Mr. Schmitz, Plaintiff's Exhibit 36 for identification and ask if you can tell us what that is.

A It is a Memorandum to Dr. Schaefer signed by myself dated Monday, February 29, 1960, drawn up in Union Bank of Switzerland.

Q What is the nature of the Memorandum?

A The Memorandum has to do with criteria and considerations to be considered relating to the trusteeship. It speaks for itself. It's an additional Memo.

Q When you say "Additional Topics to be Considered at Contemplated Meeting, what meeting was contemplated?

A The meeting that was contemplated was the meeting desired by Interhandel to have this meeting, to have Mr. Charles E. Wilson come to Paris.

MR. O'DONOGHUE: There is no objection, as I understand.

THE COURT: What is the number of that exhibit?

MR. O'DONOGHUE: 36.

THE COURT: Number 36 is received in evidence.

(Plaintiff's No. 36 received.)

BY MR. O'DONOGHUE:

Q Was any discussion had at that time when you were in Zurich about the time and place of a meeting between  
2-18 Dr. Schaefer and Mr. Wilson?

A Yes, there was. Mr. Wilson, unfortunately, had a slight delay due to a dental problem he was having, but Dr. Schaefer and I had one meeting I remember where Dr.

Schaefer reached in his desk and wrote on a piece of paper proposed dates that would be suitable to him on his calendar.

Of course, he is a very busy man, and he had to look for days -- and he wrote down on this slip of paper dates that he would suggest that I shoot for to get the parties together in Paris.

Q Was any tentative date agreed on at that time?

A No. These were just dates that might be worked out. I mean, these were dates that we hoped we could get everything done and accomplished by. So, I had to be able to tell Mr. Wilson that Dr. Schaefer could be available this date, et cetera and fit it in with Mr. Wilson's schedule.

Q By the way, Dr. Schaefer knew without your telling him who Mr. Charles Wilson was, did he?

A Indeed he did. I recall at my first meeting and subsequent meetings, he expressed Mr. Wilson's world-wide reputation. He knew who he was and so stated to me.

\* \* \*

190

BY MR. O'DONOGHUE:

Q After the drafting of this so-called "A" and "B", did you leave Zurich?

A Yes, I left Zurich. I flew back to New York.

Q And, when you got there, what did you do?

A I went to see Mr. Wilson at his office, and presented him with the drafts "A" and "B" for his consideration.

And, he said, I recall, that he would see to it -- he said he had the intention of forwarding them to the white house.

Q Did you discuss with him then anything about a time of meeting?

A I told him that Interhandel officials urged me in Zurich to try to expedite it, because they felt eager that he accept this -- that he took this step with these things to consider them.

Q Who is Mr. Charles Spofford?

A Mr. Charles Spofford is if not the senior partner, one of the senior partners of Davis Polk Wardwell Sunderland and Kiendl.

Q A New York law firm?

A A New York law firm, yes.

Q Did you have occasion to see him during this period?

A I saw him before May 1960, but only walking out of an office. I had no occasion to really meet him. I saw him in Mr. Wilson's office coming out. I had no real meeting with  
191 him until later.

Q He didn't, as far as you know, consider these drafts that you have prepared?

A I would have no knowledge of that.

THE DEPUTY CLERK: Plaintiff's Exhibit Number 37 marked for identification.

\* \* \*

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you what has been marked Plaintiff's exhibit for identification number 37 and ask you if you know what that is?

A Yes, it is a copy of a letter of mine to Dr. Schaefer, Union Bank dated the 15th of March, 1960.

MR. O'DONOGHUE: I offer it.

THE COURT: It will be received.

\* \* \*

THE DEPUTY CLERK: Plaintiff's Exhibit Number 38 marked for identification.

\* \* \*

192

BY MR. O'DONOGHUE:

Q I show you plaintiff's Exhibit Number 38 for identification and ask you if you can tell us what that is.

A This is a cable sent to me on the 16th of March from Bank Union, signed Schaefer, Bank Union

MR. O'DONOGHUE: I offer this.

MR. WILSON: No objection.

THE COURT: It will be received.

\* \* \*



THE DEPUTY CLERK: Plaintiff's Exhibit Number 39 marked for identification.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Number 39 for identification and ask you about that.

A This is a copy of a cable which I sent to Dr. Alfred Schaefer, Bank Union, Zurich, 17, March, 1960.

MR. WILSON: No objection.

THE COURT: Without objection it will be admitted.

\* \* \*

193

THE DEPUTY CLERK: Plaintiff's Exhibit Number 40 marked for identification.

\* \* \*

MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit Number 40 for identification and ask you what that may be.

A This is a cable which I received signed Bank Union, which is the cable name for Union Bank, Switzerland, telling me that Dr. Wehrli is arriving in New York and going to contact me immediately.

Q What is the date of it?

A The date of it is March 23rd, 1960.

MR. WILSON: No objection.

THE COURT: Without objection it will be received.

\* \* \*

THE DEPUTY CLERK: Plaintiff's Exhibit Number 41  
marked for identification.

194

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 41 for identification,  
Mr. Schmitz and ask you what this is.

A This is a copy -- this is an original airmail  
letter to me express special delivery, signed by Dr. Wehrli,  
on Union Bank of Switzerland's letterhead dated March 22, 1960.

MR. WILSON: No objection.

THE COURT: Without objection it will be received.

\*\*\*

BY MR. O'DONOGHUE:

Q Now, Mr. Schmitz, Exhibits 40 and 41 relate to the  
proposed visit of Dr. Wehrli to New York?

A Yes.

Q And, is that Dr. Ulrich Wehrli?

A Yes, Dr. Ulrich Wehrli.

Q And, did he get in touch with you when he arrived in  
New York if he did arrive?

A Yes, he called me at my home when he arrived --  
upon arrival.

Q Do you know when that was? Was it in accordance with  
the date indicated in the letter -- in the telegram?

A Yes.

Q Now, tell us about your meetings with him in New York.

195       A     Well, Dr. Wehrli and I went up to the St. Regis Hotel where he was staying. He informed me he was sent over by Dr. Schaefer. And, the reasons I was given by him was that Union Bank was very very eager to get Mr. Wilson to accept this mandate and that he would like to meet with Mr. Charles E. Wilson, and of course, during the course of this visit he and I were together a good deal. I recall that we were in St. Regis when we first met, and we almost ran into Mr. Charles Brupbacher.

Q     Who is he?

A     Mr. Charles Brupbacher was the leader of a minority group of Interhandel stockholders who was very active in Zurich. He always represented himself as a great protagonist with the Swiss cause. Mr. Brupbacher, was as I said, -- represented some ten or fifteen percent, I was told, of the stock. Mr. Wehrli and I ducked around the corner, because Dr. Wehrli and I didn't want to have Mr. Brupbacher know we were in New York together.

Q     What was Dr. Wehrli's position in connection with Interhandel?

A     I don't know if he had any at all.

THE COURT: Any what?

THE WITNESS: I said he came over as an agent of Dr. Schaefer, as a man from Union Bank. I don't think he had any capacity in Interhandel at all.

196 Q Was he an official of Union Bank?

A Yes, he was to my understanding an official of Union Bank.

Q He and Dr. Schaefer both represented, had they, that Union Bank controlled Interhandel by then?

A Yes, repeatedly.

Q In your first meeting with him, was Mr. Charles Wilson present?

A No, my first meeting with him was at his hotel.

Q Yes, I know. Was Mr. Wilson present?

A No.

Q Did you meet with -- Well, now, how long a meeting was that?

A The first meeting?

Q Yes.

A Well, we -- I think we were together -- Well, we were together for a good part of the day, if I recall. Dr. Wehrli told me that Interhandel concluded -- Union Bank concluded they had to take this one direct line to recovery of this General Aniline and Film Corporation and not deviate. I recall that Dr. Wehrli --

MR. WILSON: The question was how long did the meeting last.

THE WITNESS: I would say we were three or four hours

197 together.

Q Was there any discussion at that time of your fee arrangements?

A Not really.

\* \* \*

BY MR. O'DONOGHUE:

Q Was any mention made of Mr. John Wilson in these discussions?

A Oh, yes.

Q What?

A Well, Dr. Wehrli told me he was instructed to tell Mr. John Wilson he was over here -- if Mr. John Wilson knew he was over here to tell him he was over here on some Chesapeake and Ohio matter. During the course of his visit there was 198 occasion where Mr. John Wilson called Dr. Wehrli to try to get Dr. Wehrli to meet him in New York City for a meeting with -- I think it was the Sutro brothers, and Dr. Wehrli didn't particularly want to do this, and when Dr. Wehrli informed Mr. Charles Wilson about this with me, Mr. Wilson said if there was going to be any dealings at all with any of these Sutros or Wallstreet people, Mr. Charles Wilson would wash his hands of the whole matter.

Q Did Dr. Wehrli meet with Mr. Wilson?

A Yes, at his office.

THE COURT: Are you talking about Mr. Charles Wilson?

THE WITNESS: You meant Mr. Charles Wilson?

BY MR. O'DONOGHUE:

Q Yes, on this visit?

A Yes.

Q Was that on the same day?

A I don't think it was. I think it was the next day.

\* \* \*

199

BY MR. O'DONOGHUE:

Q What was the discussion at that meeting between Mr. Wilson -- Charles Wilson, that is, and Dr. Wehrli?

A As I recall, Dr. Wehrli stated to Mr. Charles Wilson that he was sent over specifically to try and expedite his acceptance, then to make representation on the part of Dr. Schaefer as to the eagerness with which they wanted a meeting in Paris, France, and preferably before the annual stockholder's meeting, and we adjourned the meeting, and went to lunch at the Links Club. Mr. Wilson invited Dr. Wehrli to the Links Club and the subject matter of the discussion at the Links Club -- Charles E. Wilson's club, was that Mr. Charles Wilson informed Dr. Wehrli he had discussions in this matter at the white house, and so long as the Swiss were willing to give him irrevocable power of trust to settle this matter, that they could look forward to his coming to Paris, and he could tell Dr. Schaefer that he would be favorably inclined to accept such powers.

Q How long was Dr. Wehrli in New York?

A Well, he was in New York part of one week. Then, I recall that he was with Mr. John Wilson at a proposed meeting in New York the following Monday. I was up in Greenwich, Connecticut with Dr. Wehrli. Dr. Wehrli had a telephone conversation with Wilson about the suggested meeting with Sutro. I told Wehrli we wouldn't touch the whole thing with a ten foot pole any more if this took place. I told 200 Dr. Wehrli he should take a train to Boston. I put him on a train to Boston to get him out of town. The meeting with Sutro didn't occur.

Q Did Mr. Charles Wilson express himself to Dr. Wehrli on the possibility of accepting the trusteeship?

A Yes. I stated --

\*\*\*

THE WITNESS: The answer is yes.

BY MR. O'DONOGHUE:

Q Did he say he would accept it?

A No, he did not. I said that he said that he would be willing to meet with Dr. Schaefer at Paris based upon the representations of Dr. Wehrli that Interhandel would stick by this one sole line from there on in.

Q When did he say the stockholder's meeting of Interhandel would be held? What date?



A The date I gathered would be sometime in May, but he said if they knew that Mr. Wilson was going to come to Paris, they would postpone it.

Q I see. No date was agreed on at that time, is that correct?

201 A No, no date was agreed on.

Q How many meetings altogether were there between you and Dr. Wehrli if you can remember?

A There was the first meeting at the --

Q Just how many?

A Four or five.

Q How many times did he meet with Mr. Charles Wilson?

A I think he met with him twice.

Q Now, you don't remember precisely when, do you -- when Dr. Wehrli left New York to return to Switzerland?

A Not precisely. He was --

MR. WILSON: I object.

BY MR. O'DONOGHUE:

Q Approximately.

A Approximately the middle of the following week.

Q What week?

A The week after he arrived. I think he was here close to a week.

Q Can you give us a date on that?

A Not from my recollection exactly, no.

THE DEPUTY CLERK: Plaintiff's Exhibit Number 42 marked for identification.

\*\*\*

202

BY MR. O'DONOGHUE:

Q Did you have occasion to write to Dr. Schaefer after that meeting with Dr. Wehrli?

A I had occasion to write, yes.

Q I show you Plaintiff's Exhibit 42 for identification and ask you if you can tell us what that is.

A Yes, this is a letter dated April 12, 1960, of mine to Dr. Schaefer written after Dr. Wehrli had gone back to Zurich.

MR. O'DONOGHUE: I offer this.

MR. WILSON: No objection.

THE COURT: Without objection it will be received in evidence.

\*\*\*

203

THE DEPUTY CLERK: Plaintiff's Exhibit Number 43 marked for identification.

\*\*\*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's 43 for identification and ask you if you can identify that.

A This is a telegram sent to me on the 14th of April.

MR. WILSON: No objection.

THE COURT: You have no objection to this one, Mr. Wilson?

MR. WILSON: No objection.

THE COURT: Without objection it will be received.

\* \* \*

BY MR. O'DONOGHUE:

Q This telegram or cable or whatever it is says deeply disappointed of recent events here which I learned today from newspapers, could you tell us what he was referring to.

A Yes, I can. He was referring to an article which was published in the New York Herald Tribune which contained allegations by a Mr. David Green and some of his associates who called themselves -- I believe the General Aniline & Film stockholders' committee -- Well, I don't know precisely the name, but it had an office in New York, and it was a minority stockholders' group headed by this man Green.

This article in the New York Herald Tribune reported an alleged statement by this Mr. Green to the effect that he and his associates had just returned from Switzerland, and that settlement of this controversy was imminent suggested to Aniline they had been in active negotiations purportedly with the management officials of Interhandel.

THE COURT: Of what?

THE WITNESS: Of Interhandel.

BY MR. O'DONOGHUE:

Q Did you reply to that cable?

A Yes, I replied.

THE DEPUTY CLERK: Plaintiff's Exhibit Number 44  
marked for identification.

\* \* \*

205 BY MR. O'DONOGHUE:

Q How did you reply?

A As I recall this was Easter time.

THE COURT: I can't hear you, sir.

THE WITNESS: I sent a telegram to Union Bank, Dr.  
Wahrli, I recall.

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit Number 44 for  
identification, and ask you if that is your reply?

A Yes, this is my reply dated April 14, with an appended  
recable.

MR. WILSON: No objection.

THE COURT: Without objection it will be received.

\* \* \*

THE DEPUTY CLERK: Plaintiff's Exhibit Number 45  
marked for identification.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's 45 for identification and ask  
206 you if you can tell us what that is.

A Yes, this is a cable which I received dated April  
19, 1960, signed Schaefer, Bank Union.

MR. WILSON: No objection.

THE COURT: Without objection it will be received.

\* \* \*

BY MR. O'DONOGHUE:

Q What did you do as a result of that telegram if  
anything?

A The first thing I did was to communicate all of  
these cables and my responses to Mr. Charles E. Wilson  
and Mr. Wilson stated to me that I should make it clear to  
Dr. Schaefer at Union Bank if there was any substance to it --  
anything material, valid in the newspaper article that they were  
negotiating with the Green group that he would completely  
wash his hands of the whole matter, and I then undertook to  
fly to London, and I flew to London from where I telephoned  
Dr. Schaefer early in the morning at Union Bank. I told Dr.  
Schaefer that I was in London and I would turn right  
back if there was anything to these newspaper articles, and  
he asked me to please believe him that there was nothing  
to it, and would I please come to Zurich and meet him at the  
earliest moment at his office. So, I got a plane from London, and

207 flew to Zurich. That afternoon, I was in Dr. Schaefer's office in Zurich.

Q Do you know the date of that?

A Well, it was about the 17th or 18th of April.

Q What was the substance of your conversation in Dr. Schaefer's office.

A I went into Dr. Schaefer's office and told him right to the point and straight from the shoulder that if there was any substance to this matter of these groups having done these things that I wouldn't continue working on my commission to create this trusteeship. I couldn't afford it, and that Mr. Wilson certainly wasn't going to do it, and I would leave the Swiss to their own devices to get this property and company back and get settlement. I was not going to lend myself to this.

Dr. Schaefer was very much upset by this and he stated to me that I could believe that it wasn't so, that he actually never had a meeting with these people as represented in the newspapers, and I said, "Well, if I am to continue at all to risk my time, and efforts and money, and everything, I will insist that we have from you a letter to Mr. Charles Wilson disavowing this, a letter to Mr. Green disavowing this and that the Interhandel company, the board would have, to now get right down to the brass tax, and they would have to ratify the powers they wanted me to give --

208 to work up for them for Mr. Wilson, and on the basis I would be promised I would have these letters from Mr. Wilson, and we even suggested getting a letter for Attorney General Rodgers, and only upon his promises that I could trust this that did I stay on in Zurich, whereupon, I was asked by Dr. Schaefer to draw up board resolutions of the company an option agreement and specific powers in trust which gave to Mr. Charles E. Wilson coupled to Mr. Wilson's personal interest <sup>power</sup> an absolutely irrevocable/of trust, settle the controversy and to recover the property in the United States.

I also told Dr. Schaefer that in view of the fact that we had previously agreed in the original preconditions that all equity had to be satisfied in the United States out of the funds and premises of the avails of sale, that Mr. Wilson would have to be given the sole power to pay all agents and pay all claims in the United States, and if Mr. Wilson was to be asked by me to come to Paris, it could only be upon the condition I could represent to him that the Swiss had ratified these powers, and Mr. Wilson would be able to have a free hand in exercising the option at his discretion, and that these powers had to be powers that he could exercise with money being no object to get clear title to pay off all of the liens and all claims. Dr. Schaefer said that Interhandel would do this.



I then set to work, and I worked for days at --  
209 I didn't go back to the United States. I stayed at Union  
Bank. I worked until this was done. I was personally  
present when these powers were signed at Union Bank.

THE DEPUTY CLERK: Plaintiff's Exhibit Number 46  
marked for identification.

\*\*\*

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's Exhibit  
Number 46 for identification and ask you if you can identify  
that.

A This is a copy of a memo that I gave Dr. Schaefer  
on April 26, 1960.

Q Did he show you a letter from Mr. Green?

A No, he didn't show -- I don't recall him showing  
me one from Mr. Green, but we drafted one to Mr. Green.

MR. WILSON: No objection.

THE COURT: Without objection the exhibit will be  
received into evidence.

\*\*\*

THE DEPUTY CLERK: Plaintiff's Exhibit Number 47 marked  
for identification. Plaintiff's Exhibit Number 48 marked for  
210 identification.

\*\*\*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibits 47 and 48 for identification and ask you if you can tell us what they are?

A There is no they about them. They are all one document. They speak for themselves. They are all one document.

Q What are they?

A They are the resolutions of the Interhandel board of directors, an option, contract and powers of attorney, option connected with the resolution and the option to Mr. Charles E. Wilson delivered at Paris.

Q Who drew those up?

A I drew them up.

MR. WILSON: I have no objection.

THE COURT: Without objection --

\* \* \*

MR. WILSON: May I ask a question on the admissibility of these documents?

THE COURT: Yes.

BY MR. WILSON:

Q Mr. Schmitz, were 47 and 48 signed by Mr. Schaefer  
211 in Zurich prior to the Paris meeting?

A They were signed both by Dr. Schaefer and Dr. Deloos.

\* \* \*

BY MR. WILSON:

Q Prior to the Paris meeting?

A Prior to the Paris meeting, yes, sir.

Q Tell his Honor who Dr. Deloes was.

A Dr. Deloes was president of Interhandel. I was informed that he was head of the Swiss Bank association.

Q He was a member of the board of directors of Interhandel?

A Yes. .

MR. WILSON: I have no objection to either document 47 or 48.

THE COURT: Without objection the two exhibits will be received into evidence.

\*\*\*

BY MR. O'DONOGHUE:

Q The minutes contain certain resolutions. Were you advised whether they were adopted by the board?

A Yes, I was informed that they were adopted and they were made part of the whole -- they were part of the powers --  
212 incorporated in the powers.

THE DEPUTY CLERK: Plaintiff's Exhibit Number 49 for identification.

\*\*\*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit Number 49 for identification and ask you what that is.

A This is a letter signed by Dr. Schaefer, Chief general manager, Union Bank, Switzerland, addressed to Mr. Charles E. Wilson, written in Zurich and drafted by me for Dr. Schaefer on April 28, 1960.

MR. WILSON: No objection.

\* \* \*

THE COURT: Without objection that will be received in evidence.

\* \* \*

213

BY MR. O'DONOGHUE:

Q What were the circumstances under which you drafted a letter signed by Dr. Schaefer?

A Dr. Schaefer had promised me when I got to Zurich there was no substance to the published article in the New York Herald Tribune with the allegations of Mr. Green.

The purpose of this was that Dr. Schaefer promised to give me a letter for Mr. Charles E. Wilson which would be my -- which would be delivered to Mr. Charles E. Wilson, and I would have to know this had been signed before I would consider having Mr. Wilson come over to Paris, disavowing the allegations of the newspapers.

Q Did Dr. Schaefer draft it first or did you correct it or how was that done?

A Well, as I recall, Dr. Schaefer asked that such a letter be drafted for his signature, and I recall that Dr. Ulrich Wehrli and I spent some time on this matter, so that actually Dr. Schaefer -- it was his letter, and he could have changed the original draft, but we set to work on it together at the time.

Q What was the purpose of your drafting it?

A Well, I was working with Dr. Wehrli on the draft. It was simply that I wanted a letter with Dr. Wehrli's assistance which would say what Dr. Schaefer had said to me were the circumstances to be related to Mr. Charles Wilson.

214 Q Was it to satisfy you and Mr. Wilson?

A Both Mr. Wilson and myself, yes.

Q Now, were these the only documents prepared then in Zurich toward the end of April by you or that you have knowledge of?

A I don't know if they are the only ones, no.

Q Well, in the course of preparation of this letter addressed to Mr. Wilson, a copy of which was sent to Mr. Green, was any correspondence shown to you between Dr. Schaefer and Mr. Green?

A Yes, I recall some such correspondence.

Q Did you obtain copies of it?

A I may have been given a copy of it at Paris or prior to going to Paris? Yes, I was given a copy of one which I took to Paris when I was sent there by Interhandel.

Q Now, the letter to Mr. Wilson -- was that mailed to him?

A No, it was taken to Paris by me and I delivered it to Mr. Wilson before Dr. Schaefer came in Paris.

Q After the completion of this work in Zurich, what was done next?

A After the work -- After I knew that the powers had been ratified, the board resolutions had been ratified and saw them signed, I then informed Mr. Wilson that it was -- I was prepared to ask him to come to Paris. And, I told him, I believe  
215 in the telegram that he could make arrangements to bring Chuck Spofford along.

Q I Remember that telegram of Dr. Schaeffer about the meeting at the Ritz in Paris on the 27th and 28th.

A That was in connection with the Green matter. Dr. Schaefer sent me the telegram in New York asking me to come to Paris so he could explain the Green matter.

Q Did you actually meet in Paris?

A Following that telegram I flew to London.

Q Did you and Dr. Schaefer and Mr. Charles Wilson and some others meet?

A Yes, we met in Paris.

Q When was that?

A That was -- I left for Paris. I was there on the 29th and 30th and into the first of May, 1960. I left -- Interhandel or Union Bank made reservations at a hotel called Royal Monceau. I was informed that the Ritz was full.

\* \* \*



MARIE S. TAYLOR  
Official Court Reporter  
Room 6812, United States Court House  
Washington, D. C.

219

BY MR. O'DONOGHUE:

Q Mr. Schmitz, my recollection of where we stopped yesterday afternoon was upon your arrival in Paris on April 19, 1960. Was that the date of your arrival?

A I arrived the night of the 28th.

Q Were you traveling alone at that time?

A Yes, I was traveling alone.

Q Did you meet anyone that night or the next day?

A I met someone the next day.

Q Who was that?

A The next morning I met Mr. Charles E. Wilson at the hotel we were staying at.

Q You were staying at the same hotel?

A Yes.

Q Was he alone?

A Yes.

Q Did you have any discussion with him?

220

A Yes, I did.

Q What was the subject matter and what was the contents of that discussion?

MR. WILSON: If Your Honor please, I believe you have ruled on this point, but I am not sure in this context. I would like to put it in the form of an objection to conversation between Mr. Schmitz and Mr. Wilson.

THE COURT: I will overrule the objection.

BY MR. O'DONOGHUE:

Q Do you understand the question?

A Yes.

Q On the morning of the 29th.

A Well, the first thing I did was I delivered to Mr. Charles E. Wilson a letter that I was given from Dr. Schaeffer to him, addressed to him. .

Q That was the letter dated April 28th which has been admitted in evidence as Plaintiff Exhibit 49, is that what you are referring to?

A May I see it, please.

(Document handed to the witness.)

THE WITNESS: Yes, that is the letter.

BY MR. O'DONOGHUE:

Q Now, what other discussions did you have?

A I briefly oriented Mr. Wilson as to some of the activities and told him when Dr. Schaeffer would arrive and  
221 Dr. Ulrich Wehrli would arrive the next day. And he said that we should wait until Mr. Spofford got in that afternoon to have further discussions.

Q Did Mr. Spofford come that day?

A Yes, he arrived that afternoon.

Q Did you have further discussions with him and with Mr. Wilson at that time?

A Yes, I did.

Q Did you at that time have the copies of the proposed powers and resolution of the Interhandel board to show them?

A I had my handwritten originals from which the ratified documents were transcribed, the ones that I had used in drawing them up. I told him that Dr. Schaeffer would arrive with the ratified powers, and I told him that the Swiss board of directors had ratified these powers, and at the lengthy meeting with Mr. Charles E. Wilson and Mr. Spofford that evening I went over step-by-step the powers that would be conveyed subject to his acceptance of the option to become trustee.

Q Did you get in touch with the people in Zurich at that time?

A No, I did not. We had already agreed and arranged that they would be there.

Q When?

A That they would come on the morning of the 29th.

Q Did they in fact come in that day?

A Yes, they did.

Q Who came?

A Well, Dr. Ulrich Wehrli came, as I recall, first, and then Dr. Schaeffer arrived a little later in the morning.

Q Did you all meet together at that time?

A Yes, we met. I recall introducing Dr. Schaeffer to Mr. Charles E. Wilson, and we had a preliminary discussion and then we had a luncheon.

Q Had Mr. Spofford met Dr. Wehrli or had Mr. Wilson met Dr. Wehrli before?

A I know that Mr. Wilson had met Dr. Ulrich Wehrli in New York, but Mr. Spofford, not to my knowledge, no.

Q Did you introduce him then?

A Yes.

Q I suppose at luncheon there was no particular business discussion, was there?

A At luncheon there was no particular business discussion. Dr. Schaeffer made a very fine presentation during luncheon of his views about the situation in Europe and the importance of stability, and so forth. But it was a very high intellectual discussion in these areas. That was while we had lunch.

Q Did the time come that day when you got down to business?

A Yes, it did.

Q When and where was that?

A Well, it was in the hotel. Union Bank had arranged and made the reservations for a suite with a large conference table where we could have these discussions in private that afternoon.

Q Will you recount in some detail the discussions that were held that afternoon.

A Yes, I will. Present in the meeting were, on the one hand --

Q Those people we just named were at the meeting?

A Dr. Schaeffer, Dr. Wehrli, Mr. Charles E. Wilson, Mr. Charles Spofford and myself. And Dr. Schaeffer and Dr. Wehrli had in their possession the ratified option, the powers and resolutions, and there were copies at hand, but, of course, we didn't get immediately down to the business of going over these powers and papers.

There was originally a discussion by Dr. Schaeffer. Dr. Schaeffer was conducting the meeting, and Dr. Schaeffer did a very precise, very prolonged, I would say, job of being very meticulous about the Swiss positions with respect to this very, very important international matter.

Q What did he say?

A He stated to Mr. Charles E. Wilson that the opportunity to be able to be in Paris to extend on behalf of the board of directors of Interhandel this preferred power of trust was extremely important to him. He stated that he wanted to make Mr. Wilson understand all about the positions of Interhandel and the entire Swiss positions on this matter.

He said to Mr. Wilson that Mr. Charles Wilson could be absolutely confident that he could rely on every representa-

tion that he made. He stated that Mr. Charles E. Wilson could be absolutely confident that the Swiss position had integrity and that nothing would ever arise which could possibly confront Mr. Wilson, if he did consider accepting the documents which would be the powers upon execution, which would ever show that there was any merit or any validity whatsoever to the allegations that had been constantly repeated internationally that General Aniline Film Corporation and Interhandel were enemy-owned, enemy-tainted.

Dr. Schaeffer stated that he could say, too, this entire objective of recovery of this property in the United States of America was one of honor to Switzerland; that so many years had gone by and that the position of Switzerland was embodied in it by virtue of the action of the Swiss government to pursue the matter under the treaty rights they were to assert at The Hague World Court of Justice. And that all of the big Swiss banks were on the executive committee of the board for whom he spoke.

225 He stated that the matter was one where they had raised Interhandel up to the level of a cause because the entire conduct of this matter was really an offense against the rights of neutrals against the dignity of a country which could otherwise not defend itself if it was not able to have justice in forms and courts, and that the merits of the Interhandel cause were absolutely just.



He said to Mr. Charles E. Wilson that I -- and he pointed to me -- "Mr. Robert Schmitz here speaks for us. He has drawn up these papers for us and they speak for our positions completely. With his permission, we would like to publish these board resolutions in the press to show what our posture is towards the United States of America on this question. That our right to our company in the United States is a matter of right that we stand unalterably opposed against compulsory sale of this company in the United States."

Dr. Schaeffer said in the meeting that Dr. Pfenninger had been accused wrongly of having entertained a discussion of any 50-50 percentage split settlements. That this was out of the question wholly, that Interhandel would go to the Hague if necessary.

He said to Mr. Wilson that he recognized his great capacities and his world-wide reputation, and he asked Mr. Wilson if Mr. Wilson could possibly discuss this matter at the White House. And I recall Mr. Wilson answering and saying, "I already have, Dr. Schaeffer."

26

I recall that Dr. Schaeffer pointed out that there were many stockholders groups in Switzerland who over the years had complained about this matter. It was a great responsibility on his part, and that the board of directors had concluded, after all these years, had expressed in the resolu-

tions of the board that they would stand for an honorable recovery of this matter, and that actually Switzerland always stood for open-handed cards on the table international arbitration of the question.

Dr. Schaeffer emphasized that there was positively no fear on the part of Interhandel as to allowing this matter to be arbitrated, and that the Swiss government had asked repeatedly of the United States State Department that the United States Government allow the question to be submitted under the Washington Accord to international arbitration, and that Interhandel and he wanted Mr. Charles E. Wilson to know this, that Interhandel was prepared to abide by that, but that this had been rejected.

He stated that the ultimate form would be the World Court at the Hague, and he stated they were willing to go to arbitration under this; that they were in the posture expressed in the resolutions of the board of directors that Interhandel would convey to Mr. Wilson this power and trust irrevocably. That were it to take two to five years for Mr. Wilson to exercise these powers, Dr. Schaeffer stated that the board of  
227 directors wanted clear title to this property as expressed in the resolutions.

He stated to Mr. Charles E. Wilson that he wanted him to know that he wanted Mr. Wilson to exercise his powers in a manner where there would be no question about the pos-

sibility of any question arising in the United States of claims against the premises in getting this clear title. He stated that Interhandel had a right to this and that they wanted the maximum counter value possible through the trustee for the company, as long as it was a good audited deal, a good sound thing. They obviously wanted participation in the United States, if possible.

He stated that he had heard Mr. Wilson had these valued connections in the Morgan Guaranty Trust Company. That this matter was such that it would be of the greatest importance to Union Bank of Switzerland and to Interhandel through the trustees somewhere along the line to possibly build such an association through settlement.

I recall that he mentioned the name of Mr. Henry Alexander, who was then head of Morgan, and said: "As far as I am concerned, Mr. Alexander is probably the greatest banker in the world." I recall that Mr. Wilson pointed to the ceiling and said, "Yes, he is right up there."

28 I recall that Dr. Schaeffer said to Mr. Wilson that a number of American corporate entities had come into his office and had tried to prevail upon him to make a deal involving all kinds of arrangements which were substantially of no interest to Dr. Schaeffer. And that the one thing that was interesting to Dr. Schaeffer was to get Mr. Wilson to accept this trusteeship.

I recall that Dr. Schaeffer stated to Mr. Wilson that with respect to exercising paragraphs 2 and 4 of the powers and anything with respect to giving releases in the United States of America on claims that would arise or just causes that would arise against the premises, that money was no object. That Mr. Wilson as trustee should pay everything in the United States as trustee without question.

He made one request of Mr. Wilson, I recall, and that was that Mr. Wilson inform him that he was making a settlement. In other words, that Mr. Wilson as trustee would not just go ahead and do it and not let them know. But beyond that, he stated to him, to Mr. Wilson, that this was the greatest international controversy of this century, and one that he was convinced could only be settled at the top based upon proper orientation of the Government of the United States on the merits of the cause of Switzerland.

Over a period, this meeting went on for several hours and during this time he asked us to read these papers through, so everybody around the table had these papers. I recall that Mr. Spofford, who sat on my right, who was then there, Mr. Wilson intended to have Mr. Charles E. Spofford be his independent counsel as trustee with regard to recovery of the premises. I recall specifically that Mr. Wilson asked Mr. Spofford to read these with him, and the resolutions of

the board of directors were read over paragraph-by-paragraph. The appended option was read over paragraph-by-paragraph, and the powers were read over paragraph-by-paragraph.

Then after everybody had read these silently, there was a discussion that progressed along each paragraph so that Dr. Schaeffer, who had a vast grasp of this international thing, he stated to Mr. Wilson that, of course, he had only come on the board of directors in 1957, and I knew the meaning of this whole problem. He said, however, he, coming on the board of directors only in '57, he didn't know the antecedents like I did, and he told Mr. Wilson at the meeting: "Mr. Bob Schmitz here is our man. We want you to rely on him in the United States for all of the background information that you need as trustee in operating and exercising these powers, if you will only accept them."

And Mr. Wilson had occasion during the meeting to state to Dr. Schaeffer that, of course, he would not consider accepting these powers unless he checked at the White House and unless he knew that his government would have no objection to his accepting these powers by exercising this option, and he said to Dr. Schaeffer that he would do this in the interest of justice and the interest of harmony between Switzerland and the United States, and that he would do this for no compensation whatsoever, provided he had absolute power to settle himself. He said he couldn't be second-guessed in

dealing with the United States. And Dr. Schaeffer said when we were going through the powers, that Interhandel in the powers had specifically not only given Mr. Wilson the power to settle and sell, but he had been given the power to discharge all claims and he was only subject in the final accounting to his beneficiary, but Mr. Wilson in those powers saw that the Swiss Interhandel agreed not to do any of the things which Mr. Wilson as trustee had the power to do, and that they would not interfere and that they would work along with the trustee, even if it took two to five years to do this job, it was so important.

Q Was that generally speaking the gist of the discussion that afternoon?

A Oh, no.

Q Was there much more?

A There was more, yes.

Q Can you give us a list of the other topics that may have been discussed?

\* \* \*

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Q Excuse me, Mr. Schmitz. What you have told us now is basically what occurred during the general meeting, is that it?

A Yes, sir.

Q Then you say the meeting broke up?

A Well, what I mean by "broke up" is that the gentlemen stood up and were working on their papers. Dr. Ulrich Wehrli, I remember, went over to Mr. Spofford to give Mr. Spofford -- there were other things I recall right now that I think I should mention. Mr. Spofford was to be counsel for the trustee. He was asked by Mr. Wilson, Mr. Wilson leaned over and said, "Charlie, are these powers adequate for me to do my job?" And Mr. Spofford, after reading them over, said, "Yes, they are, Mr. Wilson, they are adequate."

We then had a discussion of the possibility of the trustee, in selling the company to some American company, Mr. Spofford raised the question as to whether or not it would be necessary for the trustee to get an opinion of counsel or an opinion from the United States Department of Justice as to the antitrust matters that might pertain to any possible purchaser with regard to acquisition of this property upon a sale by the trustee.

32 Q What sort of solution was contemplated or asked for by Dr. Schaeffer? Was it return of the shares, sale of the company, or what?

A The Interhandel board of directors, specifically represented by Dr. Schaeffer, Dr. Schaeffer stated that Interhandel wanted return of their property through the hands of the trustee, and they would let the trustee determine how it would be sold in the United States and to whom it would be



sold and what the conditions would be of the sale, or whether Mr. Wilson would take payment deferred over ten years or five years or whatnot. In other words, the main thing was that Interhandel didn't want to have the trustee go along with any percentage splits with the Government or anything that didn't give them the acknowledgement they had a right to their free and independent title through his hands, and that the title would flow through the trustee's hands free of all liens to the American buyer.

Dr. Schaeffer specifically stated that Interhandel was repeatedly put under duress, and the trusteeship meant very much to them because it imparted to the entire problem of dealing with the United States Government a strength and a hard-line approach that they needed.

Q Was it suggested that Mr. Wilson, Charles Wilson, could work out any compromise solution with the United States Government?

A Oh, yes, indeed. This was solely within his discretion. The powers speak for themselves.

Q All right. Now, you say that the meeting then more or less broke up. Was there some general conversation between you and the parties?

A Yes. The gentlemen got up, and I recall that Mr. Spofford went around to be with Dr. Wehrli, because they were going to deliver to Mr. Spofford, as counsel to be for

Mr. Charles E. Wilson, the actual signed ratified resolutions and options and the signed powers which would become effective upon delivery back to the Swiss by the trustees.

Now, there was another very important thing that was decided at the meeting, and this was crucial. When Dr. Schaeffer said to Mr. Charles E. Wilson: "Mr. Robert A. Schmitz is our man" --

Q You said that before.

A When he said that, he said that if Mr. Wilson should decide, upon checking at the White House or wherever he wished to check in the United States, if he should decide that he did not wish to accept this mandate or these powers, that they were all pledged in the room that if Mr. Wilson turned this down, that there would never be any -- that this meeting never took place. In other words, that there would never be any repercussions, that no words should be allowed to be known in the world or anywhere that this meeting had taken place, and that this option would be returned completely. That there would be no document, nothing in writing that would associate Mr. Wilson's name or this trusteeship option that Interhandel wanted to give, because Interhandel could not afford to be turned down on such an important matter and have it affect the stockholders.

Another very important point was put out by Interhandel --

MR. STRICKLER: May it please the Court, may we have his testimony without these punctuations as to the importance.

THE COURT: Yes.

THE WITNESS: I beg your pardon. I won't say that. I won't interpret what they were.

Dr. Schaeffer pointed out at the meeting that the Interhandel stockholders meeting was forthcoming shortly, and he wanted Mr. Charles E. Wilson to know that. He said that Mr. Charles E. Wilson should know that it would be important for Mr. Wilson to have me keep in touch with Interhandel with respect to the possibility which they would like to entertain of extending the date of the annual stockholders meeting. They would hope that Mr. Wilson would accept the option and exercise the powers as trustee prior to the stockholders meeting so that the stockholders could be told of this. But in the case that Mr. Wilson would like to have the option extended  
235 beyond three months and into November, which would be six months, meaning it didn't matter as to the elections, that Mr. Wilson could be assured that the option to have him become trustee was something permanent, really, and that he could even take six months before he decided whether he would accept it.

BY MR. O'DONOGHUE:

Q All right. Now, did you have any discussion with any of the Swiss representatives at the termination of the meeting?

A Yes. Dr. Schaeffer came over to me. I recall he disappeared into the anteroom with Mr. Charles Wilson, and he came over to me and in the most cordial fashion he said: "Mr. Schmitz, this is the finest day in my business career." He said, "We need you." He said, "We want you to stick with us." He says: "I want you to talk to Dr. Wehrli here. I have to go to Italy and I want to have you talk to Dr. Wehrli here. He has a proposal that would be of benefit to you with respect to your five percent commission. I would like you to stay here. I am keeping Dr. Wehrli here in Paris, even though I have to leave, and he won't leave until after you have gone back to the United States."

MR. WILSON: I am not sure this was said in the presence of anyone.

THE COURT: Was this a conversation between Dr. Schaeffer and yourself?

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MR. WILSON: Within the hearing of anyone else?

THE WITNESS: I don't know who heard it.

MR. WILSON: But it was the witness and Mr. Schaeffer.

THE WITNESS: Well, Dr. Schaeffer came over to me in the corner of the room and he asked me, he asked me, also, if I would consider staying on. He said: "We need you, and if Mr. Wilson becomes trustee, Mr. Wilson and I want you to be available a hundred percent in the United States to help orient Mr. Spofford and Mr. Charles E. Wilson."

I told him that I would consider this. Then Dr. Schaeffer asked me to do everything I could to make sure that Mr. Wilson fully understood the importance of this and that I do everything I could to get him to accept the trust powers. And I said I will do my very best.

Then Dr. Schaeffer said to me, "Mr. Schmitz," he said, "I know that you have put out a great effort, and I know that Mr. Wilson here has told me you have spent a great deal of money traveling and whatnot over the last 12 months or whatever it was." And he said if I would send in a voucher to Dr. Wehrli for my expenses heretofore; that it would be immediately paid.

Then he asked me whether or not I would consider even an expense advance for the forthcoming 90-day period. And I told Dr. Schaeffer that I didn't need that. That I would do my job to get the trusteeship.

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Then Dr. Schaeffer had also said that Mr. Wilson, that he would offer Mr. Wilson, I think, \$100 thousand or \$150 thousand expenses immediately, put it in a bank in New York of Mr. Wilson's choosing so that Mr. Wilson could have this expense money immediately. And Mr. Wilson said: "I don't need that." He said: "I will take your word, I will take your word. Your word is good enough for me."

MR. WILSON: If the Court please, I don't know whether this is two conversations now being blended. We had

an isolated conversation between Dr. Schaeffer and Mr. Schmitz, and now I don't know whether this is an outgrowth of that or whether it is a subsequent conversation.

Can we have these -- wait a minute, Mr. Schmitz -- may we have these separated.

THE COURT: Yes. Will you separate them.

THE WITNESS: They were separated in that Dr. Schaeffer brought it up before he said the other things to me. He brought this up about Charles E. Wilson at another point in the room beforehand.

BY MR. O'DONOGHUE:

Q Did you have any independent discussion with Dr. Wehrli on this occasion?

A That night, yes, I did.

Q When was that?

A It was after we had dinner with Mr. Spofford and  
238 Dr. Wehrli that night.

Q What was the substance of that conversation?

A Well, the substance was that I asked Dr. Wehrli what Dr. Schaeffer meant about this additional good thing for me, this additional idea which I gathered would be some kind of a bonus, and Dr. Wehrli, we were walking along the Seine River back to the hotel, and Dr. Wehrli said to me, well, he said, "We are anxious for participation in the United States. We

want you to prevail upon Mr. Wilson to let him know the importance we attach to a settlement which would not give us just cash liquidity. We want long-term participation in American industrial equities and securities, and we have shares in the United States; dividend shares of Interhandel."

He said that he had talked to Mr. Saager in Zurich, and I gathered from what he said to me that Mr. Saager was disposed towards my being able to buy some Interhandel stock under some option arrangement. That is all I could gather about it: That there would be some additional benefit to me that I could buy stock at some preferential price. I wasn't sure what stock he meant, because he stated Interhandel stock and I wasn't sure whether he meant Interhandel free stock in Switzerland or some of the 52 thousand half paid shares vested in the Treasury or some of the 26 thousand full paid shares.

I understood that Mr. Saager favored my being given an option to buy stock.

239 Q Was any other reference made to compensation to you on the 30th of April '60 in Paris?

A No.

Q Then the meeting terminated, did it?

A Yes.

Q What did you do next?

A Well, the next morning which was Sunday, May Day, May 1st, Mr. Charles E. Wilson and I took our leave of



Dr. Wehrli, and Mr. Charles E. Wilson and I flew back to the United States.

Q Did you then submit a statement of expenses?

A Yes, I did.

THE DEPUTY CLERK: Plaintiff's Exhibit No. 50 marked for identification.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 50 for identification and ask you what that is?

A This is a letter of May 4, 1960, of mine sent to Dr. Wehrli with an expense statement for \$13,733.

Q Was that paid?

A It was paid within 48 hours, as I recall.

MR. WILSON: No objection. What is the date of the letter?

240

MR. O'DONOGHUE:.. May 4th.

THE COURT: Without objection, it will be received in evidence.

\* \* \*

BY MR. O'DONOGHUE:

Q When you got back to the United States, what else did you do in this connection, in connection with the Interhandel affairs?

A When I got back to the United States, I saw Mr. Charles E. Wilson and then I started working down at Davis, Polk some time after May 4th. For about five or six days I was with Mr. Wilson in his office repeatedly, and I was down at Davis, Polk where I delivered certain documents to Mr. Spofford and dictated memoranda orienting them as to the past background of Aniline's management. I delivered to Mr. Spofford the pleadings, the complaint of Interhandel against Attorney General Tom Clark and the answer of the Government to the Section 9(a) case. And I gave to Mr. Spofford certain information as to the formation of Interhandel in 1928 which I had.

Q Have you finished?

A Well, over a period until the 23rd of May I was occupied in this preliminary orientation of Mr. Spofford and Mr. Wilson.

241 THE DEPUTY CLERK: Plaintiff's Exhibit No. 51 marked for identification.

\* \* \*

BY MR. O'DONOHUE:

Q Did you have any communication to or from Switzerland?

A During this period?

Q Yes. Aside from sending a statement of out-of-pocket expenses?

A I think I had a communication after I received the payment.

Q I show you Plaintiff's Exhibit 51 for identification, and ask you if you can tell us what that is?

A This is a letter sent to me from Union Bank by Dr. Ulrich Wehrli dated May 6, 1960.

MR. WILSON: No objection.

THE COURT: It will be received.

\* \* \*

BY MR. O'DONOGHUE:

Q Now, did you do anything pursuant to the inquiry contained in that letter?

A Yes, I did. I consulted with the trustee and I recall I advised Interhandel --

242 Q Wait a minute. You consulted with the trustee to determine what kind of a reply to make, is that it?

A Yes, that is so.

Q What conclusion was reached between you and the trustee?

A Well, Mr. Wilson was not the trustee yet.

Q I see.

A He was the optionee. The conclusion was that I should advise Union Bank that Interhandel should not see Col. Dallas Townsend on his forthcoming trip to Europe.

Q And the letter asked your advice as to whether the Interhandel people should see Col. Townsend, is that correct?

A That is correct.

MR. WILSON: The letter speaks for itself, I presume.

THE DEPUTY CLERK: Plaintiff's Exhibit No. 52 marked for identification.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 52 for identification, and ask you what that is?

A This is a telegram of mine in reply to the letter, a telegram to Dr. Ulrich Wehrli, Bank Union, dated May 9, 1960.

MR. O'DONOGHUE: I offer it.

MR. WILSON: No objection.

THE COURT: What is the number?

MR. O'DONOGHUE: Number 52, Your Honor.

THE COURT: Number 52 will be received in evidence.

\* \* \*

THE DEPUTY CLERK: Plaintiff's Exhibit No. 53 marked for identification.

\* \* \*

BY MR. O'DONOGHUE:

Q I now show you Plaintiff's Exhibit No. 53 for identification, which seems to be two telegrams, and ask you if you can tell us what they are?

A This is a cable sent to me by Dr. Wehrli dated May 18, 1960, together with my reply to the cable.

MR. WILSON: No objection.

THE COURT: The exhibit will be received in evidence.

\* \* \*

BY MR. O'DONOGHUE:

Q The cable from Dr. Wehrli reads: "Re my letter 12th, please send short report about activities since last meeting."

Did you make any attempt to reply to that?

A Yes, I think I sent a letter to him.

THE DEPUTY CLERK: Plaintiff's Exhibit No. 54 marked for identification.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 54 for identification, and ask you if you can tell us what that may be?

A This is a letter of mine to Dr. Wehrli, Union Bank, dated May 18, 1960.

Q Was that intended to be in reply to his request?

A It was intended to be in reply to his calbe request, yes.

MR. WILSON: No objection.

THE COURT: It will be received.

\* \* \*

MR. STRICKLER: Your Honor, may the record indicate we have the original handwritten copy of that document.

THE COURT: Very well.

MR. O'DONOGHUE: That is right, that is a typewritten copy of the handwritten one.

BY MR. O'DONOGHUE:

Q During this time was there any discussion with Mr. Charles Wilson about acceptance of the trusteeship?

A Well, not until the 23rd of May.

Q What occurred on the 23rd of May?

A I was at my office at Nugent --

245

THE COURT: I can't hear you.

THE WITNESS: I was at my office in New York at Nugent & Nugent, 280 Madison Avenue, and I received a telephone call from Mr. Charles E. Wilson to please come over to his office immediately. I went over to his office, and thereat he told me that he had accepted the option and had had delivered back to the Swiss under the terms thereof the copies signed, and that he was the trustee as of that moment, and he said, consistent with the agreements made at Paris, that I should be the one to inform Dr. Schaeffer about his acceptance of it. When he did accept, he sat down at his desk and he wrote in longhand a memorandum of the points that he wished me to relate to Dr. Alfred Schaeffer over the transatlantic telephone and asked me to do this.

I went back to Nugent & Nugent's office and thereat I placed a transatlantic telephone call to Zurich and I spoke with Dr. Schaeffer.

THE DEPUTY CLERK: Plaintiff's Exhibit No. 55 marked for identification.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 55 for identification and ask you what that is?

246 A This is the trustee's handwritten memorandum to me directing me to do what it says.

MR. WILSON: Date?

THE COURT: What is the date, Mr. O'Donoghue? Does it have a date?

MR. O'DONOGHUE: It was May 23, although the writing by Mr. Wilson is without a date. There is a note on the back which indicates the date.

\* \* \*

THE COURT: Without objection, it will be received in evidence. .

\* \* \*

THE DEPUTY CLERK: Plaintiff's Exhibit No. 56 marked for identification.

\* \* \*



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BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 56 for identification, and ask you if you can identify that?

A This is a cable sent to me dated May 28, 1960, by Wehrli.

Q That is Dr. Ulrich Wehrli?

A Yes.

MR. WILSON: No objection.

THE COURT: Without objection it will be received in evidence.

\* \* \*

250

BY MR. O'DONOGHUE:

Q Had Mr. Johnson Wilson been kept advised of the negotiations to obtain Mr. Charles Wilson as the trustee?

A No.

Q Was there any discussion about informing him, among Dr. Wehrli and Dr. Schaefer, Mr. Wilson and you?

A Yes.

Q What was that discussion?

A The discussion was that Mr. John Wilson should only be informed about the trusteeship if and when it was effective, and that I should relate to Dr. Schaefer, in Zurich, and give him the "green light" to inform Mr. John Wilson of the trusteeship.

Q Was that done? If so, when?

A That was done by me on May 23rd, 1960, when I called Dr. Schaefer on trans-Atlantic telephone.

Q Did you have occasion to hear from Mr. John Wilson about at this time?

A Mr. John Wilson telephoned me at my home in Greenwich, and told me that he had been informed by Dr. Schaefer that Interhandel had given some power to Mr. Charles E. Wilson and he had been instructed by Dr. Schaefer to give me his hundred percent cooperation, and that I could be sure that I  
251 would have his hundred percent cooperation.

Q Was there any further discussion in the telephone conversation---

MR. WILSON: You say, give you the cooperation, or Mr. Wilson? Which did you say?

THE WITNESS: That--- As I recall, he said he would give me -- and I am sure -- I remember he said that "I will give you my one hundred percent cooperation."

\* \* \*

BY MR. O'DONOGHUE:

Q Were any arrangements made at that time for any meetings with the two Mr. Wilsons?

A Yes. Mr. Charles Spofford said that, as counsel for the trustee, that while--- said he wanted to get busy with the trustee in Washington, but that professionally he

did not want to undertake this until such time as there had been a meeting between himself and the trustee and Mr. John Wilson on this.

Q Was there any discussion by telephone or otherwise about the announcement of the trusteeship?

252 A Well, there was a meeting held in the trustee's office where I was present with Mr. Charles Spofford, and I recall Mr. Spofford and Mr. Wilson saying that arrangements had been made to announce this in the Wall Street Journal and some other American papers and I also told Wehrli, as I recall, to go ahead with the announcements, and announcements were made in Neue Zurichcher Zeitung and Agefi, and in various European papers.

THE CLERK: Plaintiff's Exhibit No. 57 marked for identification.

(Plaintiff's Ex. No. 57 marked.)

MR. WILSON: If your Honor please, I assume that the reference to Mr. Wilson in this conversation was to Mr. Charles E. Wilson. I wish the witness would---

THE COURT: Yes. I think it would be helpful if the first name is given so we know whom we are talking about. I assume you were talking of Mr. Charles E. Wilson.

THE WITNESS: Yes, sir.

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 57 for identification and ask you what that is.

A This is a cable which I sent to Dr. Ulrich Wehrli authorizing him to disclose the name of Mr. Charles E. Wilson.

MR. WILSON: The date please?

253

MR. O'DONOGHUE: May 28, 1960.

MR. WILSON: No objection.

THE COURT: Without objection, it will be received in evidence. May I see it?

\* \* \*

THE CLERK: Plaintiff's Exhibit No. 58 marked for identification.

\* \* \*

254

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 58 for identification and ask if you can identify it.

A This is a copy of a telegram sent to me on the second of June 1960 by Dr. U. Wehrli, and it is a confirmation thereof.

\* \* \*

THE COURT: Without objection, No. 58 will be received in evidence.

(Plaintiff's No. 58 was received.)

BY MR. O'DONOGHUE:

Q Mr. Schmitz, this Exhibit 58 asks you to call Dr. Wehrli. Did you call him, and if so, what did he want

to talk to you about? At that time what did he talk to you about?

255 A I called him and I asked him what he wanted me to call about, and I recall that he stated to me that there was a man in Zurich by the name of Alvord, whom he thought might be able to do some things which could be of benefit to Interhandel, and which may be of benefit to help move the thing along with the trustee; and he wanted to know whether or not I would consider discussing the possibility of this Mr. Alvord to see the trustee in this regard, and he indicated that he was intending to come over to the United States shortly.

THE CLERK: Plaintiff's Exhibit No. 59 for identification.

(Plaintiff's No. 59 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 59 for identification and ask if you can say what that is.

A This is a telegram dated June 4, 1960 which referred to the telephone call of Mr. John Wilson, and I sent this to Dr. Ulrich Wehrli that date.

MR. WILSON: No objection.

THE COURT: Without objection, it will be received in evidence.

(Plaintiff's No. 59 was received.)

BY MR. O'DONOGHUE:

Q Do you know whether or not a meeting was held  
256 with Mr. John Wilson about this time by Mr. Spofford and  
Mr. Charles Wilson?

A Yes, I know such a meeting was held, but I did  
not attend it.

Q Were you given a report of the meeting?

A Yes, I was given a report of the meeting. I  
was in the same building the same hour, or approximately --  
I was a little late so I didn't bother attending the meeting.

THE CLERK: Plaintiff's Exhibit No. 60 marked  
for identification.

(Plaintiff's No. 60 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 59 for identifica-  
tion and ask you about that.

A This is a copy of a letter, with carbon copy to  
Mr. Charles E. Wilson, Trustee, signed by me, dated June 9,  
1960 and addressed to Dr. Ulrich Wehrli, Vice-Director,  
Union Bank, Switzerland.

MR. WILSON: No objection.

THE COURT: Without objection, it will be received.

(Plaintiff's No. 60 received.)

THE CLERK: Plaintiff's Exhibit No. 62 marked for  
identification.

(Plaintiff's No. 61 marked.)

257

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit No. 61 for identification and ask you if you can tell us what that is.

A Well, this is a copy of a communication of mine to Dr. Wehrli dated Friday, June 10, 1960.

Q When you say "a copy," do you mean that you wrote it in longhand, and this is a typewritten copy of that?

A Yes, a transcription copy, I would say.

\* \* \*

MR. WILSON: No. 61 was written in longhand, wasn't it?

THE WITNESS: I don't know for sure. I'm just looking at a transcription.

MR. WILSON: What do you call a "transcription"? This is a copy in typewriter. Do you mean this could be a transcription of a typewritten document? Or do you mean it is a copy of a hand-written document?

THE WITNESS: I identified this document as a transcription of a letter of mine.

THE COURT: What is your---

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THE WITNESS: What I mean, it is not my typewriting. My signature does not appear on it, so when I looked for my signature, I know it wasn't a letter that I



signed, so I recognized the text, so I identified it as a communication of mine to Dr. Wehrli.

MR. WILSON: I asked you yesterday, on another occasion when I was questioning you in this posture, if you made, through carbons, copies of longhand-written letters, and you said you did not.

THE WITNESS: I don't recall using the practice generally, no. I may have done it on one occasion or two occasions.

MR. WILSON: I did not ask you whether you had caused a Xerox or photostat of a handwritten letter to be taken before you despatched it on any occasion.

THE WITNESS: Oh, yes, I would sometimes use a--- not a Xerox--- At that time, sometimes I would use a machine that was called a Thermofax, as I recall the name, which gave sort of a very bad or brownish copy.

MR. WILSON: You, therefore, do have copies of your handwritten letters, verbatim and precise, because they are a picture of what you wrote, is that right, sir?

THE WITNESS: No, sir, not necessarily. I didn't always make copies at all.

259

MR. WILSON: I didn't ask you that. Do you have some?

THE WITNESS: Any that I would have would be in the possession of my counsel. I don't have any others.

MR. WILSON: Have you seen any lately, sir?

THE WITNESS: Yes, I saw one lately.

MR. WILSON: And these are Thermofax, are they?

THE WITNESS: I saw one that's a Thermofax that is quite illegible. It is a quite illegible, old, Thermofax of a written letter.

MR. WILSON: Do you know where this copy came from? I mean Number 61.

THE WITNESS: No, I do not.

MR. WILSON: And you do not know whether this was a handwritten letter or not?

THE WITNESS: I did write Dr. Wehrli by handwritten letter.

MR. WILSON: I didn't ask you that. I asked you whether this was a handwritten letter.

THE WITNESS: I couldn't answer for a fact whether it is a handwritten letter, or typed letter.

MR. WILSON: Do you have a Thermofax, a Xerox'd, or duplicated copy of a letter of June 10, 1960?

THE WITNESS: I don't know at this point.

260 MR. WILSON: You, nevertheless, identify this as a true copy of what you wrote?

THE WITNESS: I did not identify it as a true copy. It is what I stated to be a transcription of a communication to Dr. Wehrli.

THE COURT: I'm concerned about that. If he can't testify to a true copy of what he wrote, I wonder what validity it has.

MR. O'DONOGHUE: Let me explain, your Honor, and I think Mr. Wilson must know this. I know Mr. Strickler does. We had a lot of documents, as you are aware; so has the defendant. The defendant has a number of letters that were written by Mr. Schmitz to them, many of which Mr. Schmitz does not have a copy.

The defendant transcribed at some stage -- I don't know when -- the handwritten letters, and we, as counsel, have gone over the various documents; and for the convenience of the Court have agreed to -- and this is initialed by Mr. Strickler -- that this is a copy of such a letter, and therefore, we are offering that instead of the original handwritten letter. If Mr. Wilson wants the original handwritten letter, it can be produced.

THE COURT: You mean the Defendant has it?

MR. O'DONOGHUE: The Defendant has it.

261

MR. WILSON: I made no objection to this letter. I am leading up to it.

THE COURT: You sound like you are questioning the validity of it.

MR. WILSON: No, I'm trying to find out whether he has got copies of handwritten letters. I want to know---

THE COURT: I think that's proper cross-examination, but I'm not sure that it's Voir Dire examination.

MR. WILSON: All right. I will desist.

THE COURT: Very well. It will be received.

(Plaintiff's Ex. 61 was received.)

BY MR. O'DONOGHUE:

Q Did Dr. Wehrli come to this country about this time, in June of 1960?

A Yes, he was here between June 12th and 18th, roughly.

Q Did he meet with you?

A Yes.

Q Did he meet with -- I suppose we can refer to him as the Trustee now, to avoid confusion -- meet with the Trustee?

A Met with the Trustee in my presence, yes.

Q What discussions were held at that time?

A A whole series of discussions were held over a period of days.

Q Can you summarize them and tell us, generally speaking?

262 A The first matter that came up on the agenda was the matter brought up by Dr. Wehrli to me on Trans-Atlantic telephone. Dr. Wehrli came to the Trustee and said he had even been met at the airport in New York by a limousine furnished by this Mr. Alvord, and I was informed in the

Trustee's presence that this Mr. Alvord was an attorney representing the General Dynamics, who practiced law in Washington, D. C. and that Mr. Alvord thought that --- Mr. Alvord had been in Zurich, Mr. Wehrli said, with him; that Dr. Wehrli had been playing golf with him and Mr. Alvord had been pursuing him on behalf of General Dynamics Corporation, with the idea of trying to get acquisition of Interhandel, make a deal that would result in settlement, and Dr. Wehrli, because of the hundred percent, absolute discretion that had been imposed by Interhandel on the option, had not even told Mr. Alvord anything about the possibility that Mr. Charles E. Wilson would accept the powers, and that Dr. Wehrli stated that when Mr. Alvord learned of this, by the publication of Mr. Wilson's name as Trustee, that Mr. Alvord had put on some pressure to try to get to meet the Trustee to advance his points with the Trustee.

263 And I recall that I told Dr. Wehrli that the Trustee was a fiduciary, and he would not be interested in any outside pressures whatsoever. And there were several days of discussions, and Mr. Spofford came into the picture, and I recall meeting at the Drake Hotel Mr. Spofford with Dr. Wehrli, and Dr. Wehrli was suggesting that Interhandel could not afford to have enemies, and that, of course, if there was any possibility whatsoever that Mr. Alvord's

contacts could be of benefit, that he advanced the premise that these be utilized and be considered, and the Trustee would have no part of any of this.

Mr. Spofford finally made an arrangement with Mr. Alvord to have a breakfast with Mr. Alvord at the Waldorf-Astoria, and thereafter, I was informed later, that Mr. Spofford informed Mr. Alvord that it would be up to the Trustee solely to decide who would be on the Trustee's team.

Q During his visit, was there any discussion of a possible settlement with the United States Government?

A Yes. The Alvord--- What was advanced was that Alvord was proposing that he could see a way towards a very quick 60-40 settlement, which would give Interhandel 60 percent of the avails of the sale of General Aniline & Film, and the Government 40 percent; and I discussed this with the Trustee.

264 The Trustee said that this was inconsistent with his duties to recover the property based upon principle, and that he would not have anything to do with any kind of a 60-40 proposition, that he was working towards the recovery of General Aniline & Film for his beneficiaries.

Q Was there any discussion during Dr. Wehrli's visit of his having met with Mr. John Wilson?

A Oh, yes. Well, arrangements were made in the Trustee's office, in my presence, for Mr. Spofford and Dr.

Ulrich Wehrli to fly to Washington, and this was about the 15th or 18th of June. And the purpose of this joint trip that morning by Dr. Wehrli and Mr. Spofford to Washington was two-fold. It was one that Mr. Charles W. Spofford, as counsel for the Trustee, was to deliver to the Attorney General's Office an original copy of the Trustee's powers, coupled to resolutions, and that Dr. Ulrich Wehrli was to go to see John Wilson in order to instruct John Wilson as to the activities that Mr. Spofford was to undertake solely for the trustee.

Q Did Dr. Wehrli tell you about his meeting with Mr. John Wilson?

A Yes, he did.

Q What did he say?

265 A He stated to me, upon his return from Washington to New York that he had gone to John Wilson's office, and had orders to tell Mr. John Wilson that Mr. John Wilson was to confine himself to the case situation, the 9(A) Suit, and Mr. Spofford was the attorney for the Trustee who was to handle all legal matters with the United States Government as to the Trustee's dealings and settlement. And he stated to me that Mr. John Wilson had asked him to lunch at the Metropolitan Club, and that he had gone with Mr. John Wilson to the Metropolitan Club, and while they were eating,



Colonel Dallas Townsend came up to them, and Dallas Townsend said, that Spofford had been in his office and had delivered the powers, and Dr. Wehrli stated to me that Colonel Townsend said to him, "Man, those were some powers that you have given to Mr. Charles E. Wilson." And Dr. Wehrli stated to me that he said to Colonel Townsend, "We intend them to be so."

THE CLERK: Plaintiff's Exhibit No. 62 for identification.

(Plaintiff's Ex. No. 62 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 62 for identification and ask you what that is.

A This is a letter on the letterhead of Union Bank of Switzerland, to me, of June 28, 1960 from Dr. Wehrli.

MR. WILSON: No objection.

THE COURT: Without objection, it will be received in evidence.

(Plaintiff's Ex. No. 62 received.)

266

BY MR. O'DONOGHUE:

Q Aside from what you have told us, were you engaged in any other activities during the month of June 1960 with respect to the Trusteeship?

A Yes. Actually, I was specifically instructed by

the Trustee and his counsel that I could not go to Washington and be present at any dealings with the Federal Government by virtue of my interest out of the proceeds of the avails of the settlement.

I was in a meeting in the Trustee's office with Mr. Spofford, and Mr. Spofford insisted that I confine my activities solely to orienting him, that they would want me to be a hundred percent on call at all times to orient him, and to orient the Trustee; but that he didn't want me to get involved with a possible conflict of interests in my being active in any negotiations in Washington with the Government.

THE CLERK: Plaintiff's Exhibit Number 63 for identification.

(Plaintiff's Ex. No. 63 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 63 for identification and ask you what that is.

A Again, this is what appears to me to be a typed transcript copy -- it's marked "copy" -- dated New York City, Wednesday, July 13, 1960, to "Dear Ulrich" from "Bob," which was a personal, handwritten, I gather, letter. This is a transcript of a letter I wrote to Dr. Wehrli.

Q Your original letter would have been handwritten, is that it?

A Yes, sir, it would have been.

MR. O'DONOGHUE: I would like to offer this.

MR. WILSON: No objection.

THE COURT: Without objection, it will be received.

(Plaintiff's Ex. No. 63 received.)

THE CLERK: Plaintiff's Exhibit Number 64 marked for identification.

(Plaintiff's Ex. No. 64 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 64 for identification, and ask you if you can tell the Court what that is.

A This is a copy of a letter, typed letter, dated August 1st, 1960 from myself to Mr. C. E. Wilson.

THE COURT: What is the date of it?

THE WITNESS: I believe I gave the date.

MR. O'DONOGHUE: August 1, 1960.

THE WITNESS: August 1, 1960.

MR. WILSON: There are two of that date.

No objection.

268

THE COURT: Without objection, it will be received.

<sup>258</sup>  
(Plaintiff's No. 64 received.)

THE CLERK: Plaintiff's Exhibit 65 marked for identification.

(Plaintiff's Ex. No. 65 marked.)

MR. O'DONOGHUE:

Q Mr. Schmitz, can you identify Plaintiff's Exhibit 65 for identification?

A This is a copy of a communication of mine, a letter of mine, to Dr. Ulrich Wehrli, dated Tuesday, August 9, 1960.

MR. WILSON: No objection.

THE COURT: What is the number?

THE CLERK: 65.

THE COURT: Plaintiff's 65 will be received in evidence.

(Plaintiff's Ex. No. 65 was received

THE CLERK: Plaintiff's Exhibit No. 66 marked for identification.

(Plaintiff's Ex. No. 66 marked.)

MR. O'DONOGHUE:

Q I show you Plaintiff's 66 for identification and ask you if you can identify that.

A This is an original letter dated Zurich, 9 August 1960 from Dr. A. Schaefer, president of the General Management of Union Bank of Switzerland, sent to me and marked "Personal."

MR. WILSON: What's that date?

269 THE WITNESS: --with an appended typewritten paper that is marked "Translation."

MR. O'DONOGHUE: Did you ask what date that was? August 9, 1960.

MR. WILSON: We have no objection.

THE COURT: Without objection, it will be received.

(Plaintiff's No. 66 received.)

THE CLERK: Plaintiff's Exhibit No. 67 marked for identification.

(Plaintiff's No. 67 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 67 for identification and ask you what that is.

A That is an original cable to me signed "Schaefer" dated August 24, 1960.

MR. WILSON: No objection.

THE COURT: It will be received.

(Plaintiff's Ex. No. 67 received.)

BY MR. O'DONOGHUE:

Q Did you reply to that telegram?

A Yes, I replied.

THE CLERK: Plaintiff's Exhibit Number 68 for identification.

(Plaintiff's Ex. No. 68 marked.)

270

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 68 for identification and ask you what that is.

A This is a copy of a cable to Dr. Schaefer, Bank

Union, Zurich, from myself dated August 25, 1965.

MR. O'DONOGHUE: I offer that in evidence.

MR. WILSON: No objection.

THE COURT: It will be received.

(Plaintiff's Ex. No. 68 received.)

THE CLERK: Plaintiff's Exhibit No. 69 for  
identification.

(Plaintiff's Ex. No. 69 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's 69 for identification and  
ask you what that is.

A This is a carbon copy of a letter to Dr. Alfred  
Schaefer, Chief General Manager, Union Bank, Switzerland,  
dated August 25, 1960, from myself, signed with my name.

MR. WILSON: No objection.

THE COURT: It will be received.

(Plaintiff's Ex. No. 69 received.)

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I notice this letter mentions a  
meeting of the Trustee with Mr. Dillon and Mr. Herter. Did  
271 he report to you, give you that information that you supplied  
in that letter?

A Yes, he did.

Q Aside from the letter itself, do you recall what  
Mr. Charles Wilson may have said about those meetings?

A As I recall---

MR. WILSON: If your Honor please, I would like to refer to my earlier objection with regard to conversations between these two individuals. At the time I made it before, the agency had not been established. Now, the agency is in effect. This is a communication by one agent to another, and it's improper and I will object to it.

THE COURT: I will overrule the objection.

BY MR. O'DONOGHUE:

Q Do you understand the question, Mr. Schmitz?

A Yes. I can tell you what I recall of that. I recall that Mr. Charles E. Wilson, the Trustee, informed me that he had communicated with Mr. Herter his strong feelings about the need of justice for the Swiss cause, and he espoused the duties of Trustee because he believed in this world that the United States of America, that his country, should deal fairly with other countries like Switzerland; that this matter had done much to deteriorate the relationship between the United States and Switzerland; and the Trustee told me that he was using every contact he had among Mr. Dillon and Mr. Herter -- and I recall he even talked to Mr. Anderson.

Q Who was he?

A I use the term "Secretary" Anderson, whom I gather was Secretary of the Treasury at the time, I mean was in the Cabinet.



Q I have asked you before---

MR. WILSON: If your Honor please, may I focus on my last objection? Mr. Wilson is in the Courtroom, is going to be a witness, and this evidence can get in through Mr. Wilson, what he did.

I want to underscore my point that I think it is improper for this witness to repeat what Mr. Wilson told him that somebody else told Mr. Wilson.

THE COURT: I think you have made your point.

MR. WILSON: Thank you, and this will go to the whole -- whenever the occasion occurs.

THE COURT: Yes. You have a standing objection.

\* \* \*

280

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I have asked you to identify a number of letters in July and August of 1960. Aside from what is indicated in those letters, what, if anything, were you doing in respect to the trusteeship during those two months?

A I was providing the trustee and his counsel with a variety and factual information on General Aniline & Film Corporation, its corporate set up, background information on Interhandel that was in my possession and from my knowledge, and I was consulting with the trustee, and with the client, virtually three times a week, and I was preparing to work on

the basis of the proposed audit of General Aniline Film Corporation --

\* \* \*

MR. O'DONOGHUE: May this be marked as Plaintiff's Exhibit No. 70.

\* \* \*

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you Plaintiff's Exhibit No. 70 for identification and I ask you if you can tell the Court what that is?

A This is an original letter from Dr. Alfred Schaefer, Chief General Manager, Union Bank, Switzerland, dated August 30, 1960, addressed to myself -- to me.

THE COURT: Mr. Wilson, do you have any objection?

MR. WILSON: No, I don't, Your Honor. I beg your pardon for not informing the Court of that.

THE COURT: Without objection, the Exhibit will be received in evidence.

\* \* \*

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you Plaintiff's Exhibit No. 71 for identification and I ask you if you can tell the Court what that is?

A It is a copy of, transcribed of, a letter dated August 31, 1960 from me. It is to: "My dear Dr. Schaefer." And it is signed by myself. I gather it is similar to the

transcription of a handwritten letter that I had sent.

MR. O'DONOGHUE: I would like to offer this.

MR. WILSON: No objection.

THE COURT: Without objection, it will be received.

\* \* \*

233

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit No. 72 for identification and I ask you if you can identify that?

A Yes. This is a letter from Dr. Ulrich Wehrli to me dated September the 6th of 1960 and marked with the word "Enclosure".

Q Do you know what that enclosure was?

A At this moment, not. No, I don't -- I'd have to read the letter.

Q Very well.

A The enclosure was a clipping from the Zurich newspaper "Finanz and Wirtschaft."

MR. O'DONOGHUE: I would offer the letter in evidence, Your Honor, and I have the enclosure but I won't offer it unless the defendant wants me to.

MR. WILSON: No objection, I know of Finanz and Wirtschaft.

\* \* \*

THE COURT: Without objection, it will be received in evidence.

\* \* \*

284

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit for identification No. 73 and I ask you if you can identify that?

A Yes. This is entitled a copy of a letter from me to Dr., well, it is to "Dear Ulrich" meaning Dr. Wehrli, dated New York City September 17, 1960.

MR. O'DONOGHUE: I offer this in evidence.

MR. WILSON: No objection, Your Honor.

THE COURT: Without objection, it will be received in evidence.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 74 for identification and I ask you if you can identify that?

285 A Yes. It is a carbon copy of, a signed duplicate of a letter of mine to Dr. Alfred Schaefer, Chief General Manager of Union Bank, Switzerland, dated September the 19th, 1960.

MR. O'DONOGHUE: I offer this exhibit in evidence.

MR. WILSON: No objection, Your Honor.

THE COURT: Without objection, it will be received in evidence.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 75 for identification and could you tell the Court what that is?

A This is a duplicate original carbon of a letter of mine to Dr. Alfred Schaefer, Chief General Manager, Union Bank of Switzerland, Zurich, Switzerland dated September 19, 1960.

\* \* \*

236 MR. O'DONOGHUE: This is also September the 19th, but it is a one-page letter; and 75 is a five-page letter.

THE COURT: But they are both addressed to Dr. Schaefer?

MR. O'DONOGHUE: Yes, Your Honor. Is there any objection?

MR. WILSON: There is no objection, Your Honor.

THE COURT: Without objection, 75 will be received in evidence.

\* \* \*

237 [Plaintiff's Exhibit No. 76 was marked for identification.]

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you Plaintiff's Exhibit 76 for identification and I ask you if you can identify that?

A Yes. This is an original letter to me from Dr. Schaefer dated the 22nd of September, 1960 with a piece of paper marked "Translation" appended to it.

MR. WILSON: No objection.

THE COURT: It may be received.

\* \* \*

[Plaintiff's Exhibit No. 77 was  
marked for identification.]

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit No. 77 and I ask you  
if you can tell the Court what that letter is, sir?

A Yes. This is an original letter to me dated  
September 23, 1960 from Dr. Ulrich Wehrli marked also  
"Enclosure".

Q And again I gather that is something from Finanz and  
Wirtschaft?

A I didn't read that. I don't recall.

Q Very well, here it is.

A Yes, it is another enclosure from Finanz and  
Wirtschaft.

MR. O'DONOGHUE: I have the enclosure, if anyone  
wants it, Your Honor. But I would offer this.

MR. WILSON: No objection.

THE COURT: It will be received without objection.

\* \* \*

BY MR. O'DONOGHUE:

Q Those recently identified letters, Mr. Schmitz, for  
the month of September -- could you tell the Court what  
activities you were engaged in in relation to the Interhandel  
G.A.P. matter in that period?

A Yes. Mr. Spofford was establishing the basis of the dealings at the departmental level in Washington, both in the Department of Justice, Treasury and the State Department, and I consulted with him and the trustee on the basis for these pre-conditions towards definitive arrangements, and I was consulting with the trustee on the steps he was taking with respect to Morgan Guaranty Trust Company to undertake to audit the General Aniline Film Company from a commercial and industrial point of view and financial point of view, so that, as trustee, he could get them to go into the plants and to deal with the management of the company in order that he could, as trustee, undertake his duties to settle and sell, knowing the proper value of what he was charged with recovering.

Q Was there any discussion with the trustee and Mr. Spofford on the proposed visit of Mr. Spofford to Switzerland at this time?

A Yes, there was.

290 Q Did you have anything to do with those plans, or anything to do in connection with them?

A Yes, I was asked to go to Switzerland, to be there at the time Mr. Spofford was in Switzerland.

The trustee asked me to go to Switzerland to report to the Union Bank, Interhandel, on the status of accomplishment to that point towards the recovery.



BY MR. O'DONOGHUE:

Q I show you what has been marked as Plaintiff's Exhibit 78 for identification and ask you if you could tell the Court what that is?

A What it is, or identify it?

Q Well, I guess I used it interchangeably --

A It is a letter from Union Bank, Switzerland, to me, dated October 25, 1960, signed by "Ulrich" and somebody else's signature I don't recognize, that other signature.

MR. WILSON: No objection.

THE COURT: It may be received in evidence.

\* \* \*

BY MR. O'DONOGHUE:

291 Q And did you go to Switzerland about this time, Mr. Schmitz?

A Yes, I went to Switzerland in October of 1960.

Q Do you know the dates approximately?

A I know them approximately. I think I got over there about the 13th of the month, and I went to Frankfurt, and I went to Zurich from Frankfurt.

I recall I called Mr. Saager up from Frankfurt at the Union Bank.

Q What was the purpose of your going?

A My purpose -- the trustee asked me to go in order to report to the officials of the Union Bank on the fact that the

Morgan Guaranty and Trust Company was available to do the audit of General Aniline Film Corporation.

Also, secondly, that Mr. Wilson had undertaken contacts with Mr. Jinken, President of Aniline; and also Mr. Wilson had been active in opposing the Keatings-O'Brien bill, which, by its enactment, would enable the Government to sell the subject property.

THE COURT: Now, when you refer to Mr. Wilson, which Mr. Wilson do you mean?

THE WITNESS: Mr. Charles E. Wilson.

THE COURT: Very well.

THE WITNESS: And to generally report to the Union Bank officials and Dr. Schaefer that the trustee was in a position to have an audit that he desired.

BY MR. O'DONOGHUE:

Q Now, what are you referring to about an audit?

A Well, the audit that I refer to is the trustee's having experts from the Morgan Guaranty Trust Company work with top management of General Aniline Film Corporation to go into the plants and to appraise the inventory and physically fixed assets and also to make an evaluation of the market and financing possibilities for the disposal of the shares.

MR. WILSON: Did the witness say that this was arranged, Mr. O'Donoghue -- that this was arranged?

THE WITNESS: This was arranged.

\* \* \*

BY MR. O'DONOGHUE:

Q And what was the purpose, as you understood it from the trustee, of this appraisal?

A Well, as I understood it from the trustee, he, and I was present in his office when Mr. Spofford came in at the time, and prior thereto, and I recall Mr. Spofford stating to his client that as trustee he had a legal right, as trustee, to have the appraisal and that it was important for the benefit of the Interhandel and its stockholders that it be known to the trustee how he could recapitalize the company and get the best long-range financial return through a sale.

293

In other words, that the trustee should have the knowledge of the value of the assets of the premises in order to know and in order for it to be worthwhile to undertake any discussions with third parties, that as trustee he would be well acquainted with the thing; and that also that in a sale Morgan could make a proper prospectus.

Q And who did you meet with in Zurich?

A I met with Mr. Saager, I met with Mr. Spofford, I met with Dr. Ulrich Wehrli and I met with Dr. Schaefer. Dr. Wehrli was not there when I arrived but he came later; and I met with Mr. Herman Budich, I think, at that time.

Q For what period of time did this meeting extend?

A Oh, I think I was there approximately a week.

Q You mentioned various people you saw. Did you see them together or separately?

A I saw Dr. Schaefer separately. I don't remember seeing him together with Mr. Saager at all. I saw Mr. Saager and Dr. Ulrich Wehrli together and I saw Mr., I saw Dr. Wehrli alone. We had dinner together and I went to his apartment. Mr. Saager invited me to dinner at his home and introduced me to Mrs. Saager and we spent a whole evening together.

In other words, I was with Mr. Spofford at numerous meetings.

Q When were you with him and Dr. Schaefer, what was discussed?

294

A Well, there was discussion that I -- well, I first informed him of all aspects of what had been related to me by Interhandel, the trustee in the United States. Dr. Schaefer would discuss with me his strong views on these matters and as to the recovery. I mean, it's hard for me to recall all the subject matter; but it was generally that Dr. Schaefer stated, I can recall matters relating to the fact that he was very much impressed that the trustee had Morgan Guaranty coming into this matter and he felt that this was a great asset that Interhandel be able to have this benefit through the trustee.

I recall in my discussions with Mr. Saager that Mr. Saager impressed upon me his theory that the world gold

situation was going to fluctuate greatly and I remember Mr. Saager said to me that he was a great proponent of world currency stabilization and that Mr. Saager --

Q Well, I am really not talking about general conversation.

A Oh.

Q Only specifically relating to --

A Relating to Morgan Guaranty?

Q No. Relating to the trusteeship or to Interhandel G.A.F.

295 A Well, from my reports at this time, the strong buttressing of the cause for Interhandel, by the very significant achievement in getting Morgan Guaranty to come in on this with the management of General Aniline, for the audit, this Mr. Saager said to me, that he felt this was of very important value to Interhandel.

Q Was there any discussion of the upcoming American presidential election with any of these people?

A Oh, hardly -- I don't think so.

Q Was there any discussion --

A Casually, maybe. Casually.

Q Was there any discussion by you with Dr. Schaefer or anyone else concerning the compensation?

A Yes --

Q The matter of compensation?

A Yes. At that time I told Dr. Schaefer that I was more interested in helping the trustee and so on in the job he had to do and to help Interhandel get the recovery and I was not primarily concerned at the moment in whether or not I would be with my family, my eight children -- I remember showing him photographs of my sons; and I said: "Well," that I was not primarily concerned with this, no matter how hard it was, and that for the moment as long as we got the job done, that I would basically forego any matters which related to any compensation for any interim services I was rendering, in order to do my job.

Q Did you go anywhere else in Switzerland beside Zurich when you were there?

A Yes, I was asked by Dr. Wehrli and Union Bank, would I be good enough to please go to Basle while I was there and see a Dr. Sturzenegger. Dr. Wehrli said the Union Bank was not exactly on the best terms with Dr. Sturzenegger and that he knew that I was and would I please go to Dr. Sturzenegger and relay to Dr. Sturzenegger, well, this was all information that they had received and they had reason to want to have him receive and Dr. Wehrli would like to have me use my good offices and friendship with Dr. Sturzenegger to get him to meet with Mr. Spofford in Basle.

Q And did you do that?

A I did.

Q What did you do?

A I went to Basle and conferred with Dr. Sturzenegger and arranged such a meeting.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you what has been marked as Plaintiff's Exhibit 79 for identification and I ask you if you could please tell the Court what that is?

A Well, this is a letter I received from, or on the stationery of Union Bank in Switzerland from Dr. Wehrli, to me, dated November 4, 1960 signed "Wehrli"; and I received this.

Q Yes.

297

MR. O'DONOGHUE: I offer this.

MR. WILSON: No objection.

\* \* \*

BY MR. O'DONOGHUE:

Q Was there any discussion at this time when you were in Switzerland or thereafter about the trustee's going to Switzerland; and, if so, what was it and what was the upshot of it?

A Yes, there was. We were anticipating that the trustee would come to Switzerland upon the conclusion with Mr. Spofford of preliminary matters with respect to the audit of Morgan



Guaranty and Spofford having cleared the negotiating table -- in other words, the agenda for the negotiations to settle this, that Mr. Wilson, there was a tentative arrangement with Mr. Wilson, to come to Switzerland shortly thereafter, after my trip.

Q Did you report to Mr. Charles Wilson concerning the trip to Switzerland?

A Yes, I did.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit No. 80 for identification.  
298 and I ask you if you can identify that?

A Yes. This is a letter from Dr. Alfred Schaefer to me dated November 14.

Q 1960?

A 1960, I beg your pardon, and appended to it is a translation.

MR. WILSON: No objection.

THE COURT: Without objection, it will be received.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you what has been marked for identification as Plaintiff's Exhibit No. 81 and I ask you if you can tell the Court what this is?

A This is a cable of mine dated November 15, 1960 to Dr. Ulrich Wehrli, Bank Union.

MR. O'DONOGHUE: I offer this.

MR. WILSON: No objection, Your Honor.

THE COURT: Without objection, it will be received.

\* \* \*

299

BY MR. O'DONOGHUE:

Q Mr. Schmitz, referring to Plaintiff's Exhibit 31, could you tell the Court what that refers to?

A This refers to a letter that I had received that says "Re letter forth -- we agree stop can advise you in week exact dates proposed early December regards Robert."

Q What does that mean?

A That means that I could advise him within a week the exact dates proposed for the visit of the trustee to Switzerland.

\* \* \*

BY MR. O'DONOGHUE:

Q Would you look at Plaintiff's Exhibit 32 marked for identification and tell us if you can identify that?

A This is a copy of a night letter telegram to Dr. Schaefer, Bank Union, Zurich, of mine, dated -- well, it is 11:30 p.m. November 21, 1960.

MR. WILSON: No objection.

\* \* \*

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you this Plaintiff's Exhibit 32

and ask you if you can tell the Court what that refers to, please?

300           A     Yes --

MR. WILSON: If the Court please, doesn't it speak for itself? I thought it did. I would be delighted to have him read it.

MR. O'DONOGHUE: All right, why don't you read it.

THE WITNESS: Shall I read it?

THE COURT: Yes, if it speaks for itself.

THE WITNESS: "Supplementing the conversation with Saager stop to gain rapport now independent of any diplomatic steps indicated, best upon trustee visit suggest presentation of copies of executive board position, April preambles and minutes to visiting cabinet dignitaries who are oriented and whose receptivity is known stop April position now helpful as a matter of record not influenced by current currency in the banking situation."

BY MR. O'DONOGHUE:

Q     All right -- what --

THE COURT: What is your question?

MR. O'DONOGHUE: Well, I wanted to know what these executive copies of executive board position and preambles and minutes, what does that relate to.

THE WITNESS: Oh, they refer to, the trustee called me into his office and asked me --

BY MR. O'DONOGHUE:

Q No, what are they?

301 A They are the board resolutions of Interhandel coupled to the trustee's powers and the trustee called me into his office --

\* \* \*

Q Who are the visiting cabinet dignitaries?

A Secretary Anderson and Secretary Dillon, who at that time were in Switzerland and in Germany.

THE COURT: What was the date of that?

MR. WILSON: November 21, 1960.

THE WITNESS: November 21, 1960.

BY MR. O'DONOGHUE:

Q I would like to show you this -- first I will have it marked.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you what has been marked as Plaintiff's Exhibit No. 83 for identification and ask you if you could identify that for us?

A This is a cable to me from Dr. Schaefer dated November 22, 1960.

MR. WILSON: No objection.

THE COURT: It will be received in evidence.

\* \* \*

302

BY MR. O'DONOGHUE:

Q Now, what did you understand Dr. Schaefer to mean by the phone communication referred to in this telegram? Did you telephone him?

A Could I look at the telegram again, please?

Q Surely.

A Yes, I called him. I called Schaefer transatlantic and impressed upon him the importance in the eyes of the trustee of contacting Secretary Anderson and Secretary Dillon and the reaction to this cable here was that the resolutions were too extensive to present to these people and suggesting I contact Mr. Spofford on it.

MR. WILSON: Would you keep your voice up, please.

THE WITNESS: Keep my voice up?

MR. WILSON: Yes, if you would keep it up all the time, please.

THE WITNESS: Yes.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 84 for identification and ask you if you could tell us what that is?

303. A This is a telegram, cable, of mine dated November the 23rd to Dr. Alfred Schaefer, Bank Union.

MR. O'DONOGHUE: I offer this in evidence.

MR. WILSON: No objection, Your Honor.

THE COURT: Without objection, it will be received in evidence.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 85 for identification and ask you if you could tell the Court what that is?

A This is an original letter to me from Dr. Schaefer dated November 24, 1960.

Q It is in German, is it not?

A It is in German.

Q And is there a translation appended?

A Yes, there is a translation appended.

MR. WILSON: No objection, Your Honor.

THE COURT: It may be received.

\* \* \*

304

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 86 for identification and ask you if you can tell the Court what that is?

A This is a thermofax copy of a handwritten letter of mine to Dr. Schaefer, dated November 24, 1960 with the registry receipt appended.

\* \* \*

THE COURT: Let it be received in evidence that way with the understanding that it is agreed that this typewritten copy will be affixed to it as part of the exhibit.

MR. O'DONOGHUE: Thank you very much.

\* \* \*

305

BY MR. O'DONOGHUE:

Q I show you, Mr. Schmitz, Plaintiff's Exhibit No. 87 for identification and ask you if you can identify that?

A This is an original letter of Dr. Schaefer's to me dated December 1, 1960 with its original envelope postmarked and the translation from the German language.

MR. WILSON: No objection.

THE COURT: It will be received.

\* \* \*

MR. O'DONOGHUE: May I have the Court's indulgence a moment, please?

THE COURT: Certainly.

\* \* \*

306

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 88 for identification and I ask you if you can tell the Court what that document is?

A This is, well, this is a typed paper which says "Personal" to Dr. Schaefer dated New York City, December the 1st, 1960, which appears to be a transcript, typed transcription of some letter I wrote to him.

\* \* \*

THE COURT: Very well. It will be received in evidence without objection.

BY MR. O'DONOGHUE: \* \* \*

Q Aside from this correspondence and these telegrams and cables and at least one telephone conversation with Dr. Schaefer, what were your other activities in relation to



this trusteeship during the month of November, 1960?

307 A The trustee had asked me to prepare factual background material which could be used by him upon settlement for people like Leslie Gould and he asked me for information on the subject of the exceptional matter of divesting(?) of General Aniline Film Corporation. So I was asked to prepare such material and from time to time in preparation of press releases which would be needed, and as the trustee required, he would call me in his office and ask me and I would have to be available one hundred percent of the time -- he would ask me anything that came along as we went along and there was a variety of information that I had to provide.

Q Who is Leslie Gould?

A Leslie Gould was the financial writer who wrote in the "World Telegram and Sun" in the Scripps Howard group as I recall and perhaps he also wrote his column in the Hearst papers -- I'm not sure. I think he also appeared in the Hearst papers.

\* \* \*

Q I show you Plaintiff's Exhibit 39 for identification and ask you if you could tell the Court what that is?

A This is an original letter addressed to me dated December 2, 1960 from Dr. Ulrich Wehrli.

MR. WILSON: No objection.

THE COURT: It may be received without objection in evidence.

\* \* \*

OS BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit No. 90 for identification and I ask you to tell the Court what that is?

A This is a letter which states "Copy for Mr. Schmitz --Zurich, December 2, 1960" and it is from Bruno M. Saager, General Manager, Union Bank of Switzerland.

Q Who is it addressed to?

A It is addressed to me and it says "Copy of this letter is sent to Mr. Spofford."

MR. WILSON: No objection.

THE COURT: Without objection, it will be received in evidence.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 91 for identification and I ask you if you can tell the Court what that is?

A This is a telegram, a cable rather, sent to me signed "Wehrli" dated December 5, 1960.

MR. WILSON: No objection.

\* \* \*

BY MR. O'DONOGHUE:

Q Did you have any conferences with the trustee early in December of 1960?

A Yes, I did.

Q Do you remember what they were about?

A Yes, I do.

Q Would you tell the Court what the trustee and you discussed at that time?

A Well, I had a meeting with the trustee and with Mr. Spofford, at which time Mr. Spofford had stated that Col. Townsend had agreed to the audit and then the trustee had a meeting with me in which he stated he was being badgered by the Green group, that they wanted anything with Col. Townsend in Washington and then he was informed that Sen. Keating and Sen. Case were to be present.

Q I see --

A And he didn't particularly want this meeting, as trustee.

Q What is the Green group?

310 A I was informed and from reading the newspapers and from my knowledge of the matter, in my original dealings, as to the Green group in Zurich, the Green group was a group which was entitled "Minority Stockholders Protective Committee of General Aniline Film Corporation" -- that's the way I have paraphrased it.

Q They were a group of stockholders who held stock, a small quantity of stock that Interhandel did not own, is that correct?

A Oh, no, -- well, yes, very small quantity of American shares outstanding in General Aniline Film Corporation.

Q And was such a meeting held as far as you know?

A I was informed about it after it was held; yes.

Q By whom?

A By the trustee and by Sam Pryor.

Q Who is Sam Pryor?

A Mr. Sam Pryor is now a partner of Mr. Spofford's.

At that time he was an employee of Davis, Polk, Wardwell, Sunderland, and Kiendl.

Q Was he working with Mr. Spofford?

A He was assisting Mr. Spofford, yes.

Q And what did the trustee tell you about the meeting?

A Well, I recall the trustee told me that he went into this meeting and that --

MR. WILSON: Could you establish who was present, Mr. O'Donoghue?

311. THE WITNESS: Yes, I recall that, I am testifying that he told me that Mr. John Wilson was there, that Mr. Pryor was there, Col. Townsend was there and he was there and Mr. David Green was there and one or more associates of Mr. Green whose names I don't know, or weren't given. Now, as to the rest of the question -- I don't recall being told anything about anyone from Senator Keating's office being there but I recall the trustee telling me after the meeting that Col. Townsend was very eager for the trustee to advance an offer to the Government to settle this minus an audit, but that

the trustee had had the arrangements for the audit and Col. Townsend had about two days before this meeting agreed, but Col. Townsend had reneged on the audit and the trustee said that in the meeting, that Col. Townsend was very, very eager to have the trustee advance an offer to the United States Government whereby and whereunder there would be a settlement effectuated rapidly, based upon 25 percent for the United States Government and <sup>75</sup> 25 percent of the invested stock passing to the Swiss providing that 25 percent would, the 25 percent to the Government, was at least 40 million dollars.

The Trustee felt that he couldn't very well consider the matter of a percentage like this and that this was contrary to his approach to the matter and that he would insist on this audit and that he wanted to consult with Interhandel in Zurich; and he told me that we should consider flying to Zurich to see whether or not Interhandel would want the kind of settlement but, he, himself, as trustee, would not endorse it, but he wouldn't turn it down either unless Interhandel was consulted. So he wanted to ask them about this --

\* \* \*

THE COURT: Well, as I understand it, it is Morgan Guaranty, is it not?

THE WITNESS: Yes, Your Honor.

\* \* \*

BY MR. O'DONOGHUE:

Q Now, these last exhibits indicated that a Mr. Budich

was coming to New York on the 5th of December. Who is Mr. Budich:

A Mr. Budich was introduced to me in Zurich as the manager of Union Bank of Switzerland.

Q And did you meet with Mr. Budich in early December of 1960?

A I did.

313 Q And who else was with him?

A Mr. Charles E. Wilson, the trustee.

Q What was the discussion at that meeting?

A Mr. Budich, I took Mr. Budich to the trustee's office and I recall that Mr. Budich said that he was asked to come by to see the trustee on his way back from Lima, Peru, and that he was very close and spoke very favorably of Mr. Saager and I recall he wanted to tell Mr. Budich of the situation, and I recall that Mr. Budich sat in with the trustee and that they wanted to go on on the basis of standing by their commitments in getting this return, that the policies were still unwavering insofar as the recovery of the premises.

Q Now, you say, I'm not sure I understood what you said Mr. Budich said. This suggestion for a compromise should not be considered by the trustee, is that what he said?

A No. Mr. Budich did not play any part in that, as I recall. I think Mr. Budich, Mr. Budich simply was patting the trustee on the back and encouraging him and stating that

principles count and that they should stick on and fight this thing through. I mean, Mr. Budich, this was only a contact that Mr. Budich had with the trustee, it was a sort of courtesy visit, really.

\* \* \*

BY MR. O'DONOGHUE:

314 Q I show you Plaintiff's Exhibit 92 and ask you if you can tell the Court what that is?

A This is an original letter to me from Dr. Schaefer, dated Zurich, December 8, 1960 with its original envelope and translated from the translation from the English language.

MR. WILSON: No objection.

THE COURT: Without objection, it may be received in evidence.

\* \* \*

BY MR. O'DONOGHUE:

Q Now, following Mr. Budich's visit, was there any discussion about reporting the matter of the Townsend conference to anyone else other than to Mr. Budich?

A Yes. Mr. Wilson wanted to go to Zurich with me. The trustee, Charles E. Wilson, in order to confer with the directors in Zurich on this matter, he wanted to go to Zurich with me and I recall being in his office and he looked at the calendar and he asked me if we could perhaps make it Thursday and he asked me to contact --

Q Now, what date was that?



A Well, this was after December, I would say roughly around after December the 8th, I think it was right around that time. It was a few days after the meeting in the Department of Justice.

I recall that he looked on the calendar and he said, "Bob -- would you try to arrange for a meeting set up in Zurich so you can accompany me to Zurich and we can confer with Dr. Schaefer."

I tried to do this and I was advised that Dr. Schaefer could not be available when the trustee wanted to see him.

Q How were you so advised?

A I think I was advised by Mr. Saager that he would not be available.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 93 and ask you if you can tell the Court what that is?

A This is a cable to me dated December 9, 1960 from Saager informing me that Schaefer would be away.

MR. O'DONOGHUE: I offer this in evidence.

MR. WILSON: No objection.

THE COURT: Without objection, it may be received in evidence.

\* \* \*

A - 324

BY MR. O'DONOGHUE:

Q Did you postpone your visit or what arrangements were made?

A No, we didn't postpone our visit. I was informed by Union Bank that Dr. Ulrich Wehrli was going to fly over instead and see us.

Q Was that a telephone call to that effect or what?

A I think I was telephoned, I think Wehrli called to state he was coming over, if I recall.

\* \* \*

325

THE CLERK: Plaintiff's Exhibit 94 marked for identification.

(Plaintiff's Ex. No. 94 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 94 for identification and ask you if you can tell us what that is.

A This is a cable of mine to Dr. Wehrli telling him that I made a reservation for him at the Hotel Plaza.

Q What was the date of that?

A I'm sorry.

Q December 10, is that correct?

A I didn't see the date.

THE COURT: Have you seen it, Mr. Wilson?

MR. WILSON: Yes, sir, indeed I have. No objection.

THE COURT: Very well. That will be received in evidence. (Plaintiff's 94 received.)

BY MR. O'DONOGHUE:

Q Did Dr. Wehrli come to New York on the date he indicated?

A Yes, he did.

Q Did you meet with him?

A Yes, he contacted me on arrival.

Q Did Mr. Charles Wilson meet with him?

A I took him to see Mr. Charles Wilson.

326

Q Tell us about the meeting.

A Well, we had several meetings while he was there.

Q Tell us about the several meetings.

A Well, we took him to Mr. Charles Wilson, and Mr. Charles Wilson explained to Dr. Wehrli that he wanted to make a decision rather promptly, that this settlement was available, that he did not personally want Interhandel to think that he, as Trustee, endorsed this settlement which would be \$40 million guaranteed the Government, or 25 percent being at least \$40 million; and he did not endorse any settlement which did not give him, as Trustee, this audit. And he wanted Dr. Wehrli to inform him how his beneficiaries at Interhandel felt about it, and Dr. Wehrli stayed there several days. And we then had other meetings after Dr. Wehrli said he would contact Zurich. We had meetings with Mr. Spofford, of Davis, Polk, Wardell, and the outcome of this was that the Trustee asked me how I felt about it, and I said, as far as I personally was concerned,

this did not meet the criteria that had been established, and that I felt we could do better for Interhandel.

327 Then, the Trustee asked Dr. Wehrli later about it and Dr. Wehrli stated that he had been informed to say to the Trustee that as far as Interhandel was concerned, that there was no point in making a settlement with Colonel Townsend for the sake of settlement, and that the Trustee should move on to prepare to negotiate and deal with the new Kennedy Administration based on a 100 percent recovery.

THE CLERK: Plaintiff's Exhibit No. 95 marked for identification.

(Plaintiff's Ex. No. 95 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 95 for identification and ask you if you can tell what that is.

A That appears to be--- It has my name on the back signed "s Robert Schmitz." It is a letter dated December 15, 1960 to Dr. Schaefer. I gather it is a typed copy of a handwritten letter.

Q Do you remember writing such a letter?

A Yes.

MR. WILSON: No objection.

THE COURT: It will be admitted.

(Plaintiff's Ex. No. 95 received.)

CLERK: Plaintiff's Exhibit No. 96 marked for identification.

(Plaintiff's Ex. No. 96 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit No. 96 for identification and ask if you will tell the Court what that is.

328 A This is an original letter from Dr. Schaefer, dated 23 December 1960, with original envelop, postmark and translation.

MR. WILSON: No objection to 96, your Honor.

THE COURT: Very well. Without objection, it will be received in evidence.

(Plaintiff's No. 96 received.)

THE CLERK: Plaintiff's Exhibit No. 97 marked for identification.

(Plaintiff's Ex. No. 97 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 97 for identification and ask if you can identify that.

A This is a typed copy of a letter of mine to Dr. Schaefer dated Wednesday, December 28, 1960.

MR. WILSON: No objection. Are you offering that, Mr. O'Donoghue?

MR. O'DONOGHUE: Yes, your Honor, I am.

THE COURT: All right. It will be admitted.

(Plaintiff's Ex. No. 97 received.)

THE CLERK: Plaintiff's Exhibit No. 98 marked for identification.

(Plaintiff's Ex. No. 98 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Ex. No. 98 for identification and ask you if you can tell the Court what that consists of.

329 A It looks like a photostatic copy of a letter dated Zurich, December 30, 1960 written in the German language to me by Bruno Saayer, S. A. with a translation appended.

MR. O'DONOGHUE: I would offer this.

MR. WILSON: No objection.

THE COURT: It will be admitted.

(Plaintiff's Ex. No. 98 received.)

MR. O'DONOGHUE: Will you indulge me a moment, your Honor?

MR. WILSON: Mr. O'Donoghue, on this Number 98, the one you just identified -- and I have no objection to -- it says, "Thank you very much for your detailed letter of December 20th." Did you identify a December 20th letter?

MR. O'DONOGHUE: No, we don't have it. I didn't identify it. Do you have it?

MR. WILSON: No, we don't.

MR. O'DONOGHUE: I would be glad to put it in if you do.

MR. WILSON: We don't have it.

THE CLERK: Plaintiff's Exhibit No. 99 marked for identification.

(Plaintiff's Ex. No. 99 marked.)

BY MR. O'DONOGHUE:

330 Q I show you Plaintiff's Exhibit Number 99 for identification and ask, if you can, tell the Court what that is.

A This is a letter from Dr. Schaefer dated January 4, 1951 to me, with translation appended.

MR. WILSON: No objection.

THE COURT: It will be admitted.

(Plaintiff's Ex. No. 99 received.)

THE CLERK: Plaintiff's Exhibit Number 100 marked for identification.

(Plaintiff's No. 100 marked.)

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you what has been marked Plaintiff's Exhibit 100 for identification, and ask you if you can tell us what that is.

A This is a letter on Union Bank stationery from Dr. Wehrli to me dated January 5, 1961.

MR. WILSON: Mr. O'Donoghue, there were two letters of January 4. Did you identify both?

MR. O'DONOGHUE: Two of January 4th?

MR. WILSON: From Schaefer to Mr. Schmitz and one from Mr. Schmitz to Mr. Wehrli.

MR. O'DONOGHUE: Number 99, of course, is a letter from Dr. Schaefer to Mr. Schmitz dated January 4. I haven't offered any other.

\* \* \*



331 THE COURT: What is your objection, Mr. Wilson?

MR. WILSON: Because he is leaving out another letter of January 4.

THE COURT: If that is your only objection, I will overrule it.

MR. WILSON: That's my only objection. I want to get it on the record.

THE COURT: I will overrule it.

(Plaintiff's No. 100 received.)

BY MR. O'DONOGHUE:

Q During January, did you have meetings with the Trustee?

A Yes, I did.

Q Do you remember on what occasions and what matters were considered?

A Yes, I do.

Q Would you tell the Court when those meetings were held as nearly as you can remember, and what matters were discussed at them?

332 A I recall that the Trustee told me that following the decision, not to wrap this thing up with Colonel Townsend, but to go ahead for a hundred percent return under the new, Kennedy Administration. He informed me -- He took immediate steps to find out who the new Attorney General would be,

which he did do, and also he took steps to find out what the new Administration wanted of him as Trustee.

In order to orient the new staff in the Government on the antecedents of this very prolonged subject matter of the Interhandel controversy and -- the Trustee informed me towards the end of the first week in January 1961 that he wanted me to work and be available with Mr. Spofford, and that Mr. Spofford was staying up at his apartment rather than go into his office, in order to frame out a Memorandum to be delivered to the Attorney General by the Trustee, which was designed to orient the new Administration and to put the Government in a position where they would be able to have the case in a posture to settle it.

Specifically, he stated to me that Mr. Spofford's position on this was that this Memorandum should be one which would be unimpeachable authority, authentic, carefully prepared, and which would not go into the merits vis-a-vis the Government; that it would be to relate to the mind of a professional attorney, who could read it in perhaps two hours, to come to conclusions as to the feasibility of continual litigation or of stopping the litigation and settling.

333 Q Did Mr. Charles Wilson tell you whether or not he had met with the new Attorney General, Robert Kennedy?

A At that time, Mr. Robert Kennedy was not the new Attorney General.

\* \* \*

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you what has been marked Plaintiff's Exhibit 101 for identification and ask you if you can tell us what that is.

A This is a photostat of a letter of mine to Dr. Schaefer dated Thursday, January 26, 1961.

MR. O'DONOGHUE: I would like to offer this.

334 MR. WILSON: No objection.

THE COURT: Without objection, it will be received.

\* \* \*

Q For what period of time did you work with Mr. Spofford in preparing a Statement for the Department of Justice?

335 A I worked with Mr. Spofford -- He initially had to frame it out. Once he framed it out, I worked with Mr. Spofford on it up until the time it was delivered in May until its final drafts were double-checked.

Q Was there more than one draft?

A Oh, yes. I was in Zurich with Mr. Spofford several days in which Mr. Spofford and I worked on drafts, and I worked on re-drafts, blue-pencilled.

I was instructed by the Trustee and Mr. Spofford--  
The Trustee told me he told Mr. Spofford that before he

would sign such a Memorandum that he would have to have me double-check every part of it.

Q You talk about going to Zurich. When was that trip made?

A Well, I recall that I was called in to the Trustee's office to have a conference with the Trustee and Mr. Pryor, and I was advised that they had learned that Dr. Schaefer had expressed an intention to come over, and wanted to see Attorney General Robert Kennedy at that early date; and I was asked by the Trustee to take a letter of his, to deliver it to Dr. Schaefer in Zurich immediately, so that I would keep Dr. Schaefer from coming over prematurely, and also be in Zurich with Mr. Spofford in order to work with Mr. Spofford there, and to show the Interhandel people the importance of this Memorandum which was asked for by the Government. So, I went to Zurich, as requested.

Q Do you know the date of your trip to Zurich?

A I would have to refresh my recollection as to the exact date. It seems to me it was sometime--- It was within the first hundred days of the Administration; it was either February or March -- late February 1961.

Q And was Mr. Spofford there at the same time?

A Yes, he was. I got there first.

Q Who did you meet with in Zurich?

A I met with Mr. Bruno Saager, with Dr. Alfred Schaefer, and with Mr. Wehrli, or Dr. Ulrich Wehrli.

Q Did you retain a copy of the letter of Mr. Charles Wilson to Dr. Schaefer? Did you have one in your possession?

A I don't recall at this moment whether I did or not. I was asked to deliver this letter in hand, personally. It was a letter of the Trustee to Dr. Schaefer.

\* \* \*

ROBERT A. SCHMITZ,  
Plaintiff,  
vs. CIVIL ACTION 85-67  
SOCIETE INTERNATIONALE,  
Defendant.

Thursday, January 8, 1970.

The above-entitled cause was continued before the Honorable JOSEPH C. McGARRAGHY, a Judge of the United States District Court, Washington, D. C. at 10:00 a.m. on Thursday, January 8, 1970.

(Same as heretofore noted.)

MARIE S. TAYLOR  
Court Reporter  
Room 6812, United States Court House  
Washington, D. C.

340

BY MR. O'DONOGHUE:

Q I believe yesterday afternoon you were testifying about your trip to Zurich in February of 1961. At that time, you spoke about a letter that you were to deliver to Dr. Schaefer from the Trustee.

THE CLERK: Plaintiff's Exhibit 102 marked for identification.

(Plaintiff's Ex. No. 102 marked.)

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A This is a letter from Mr. Charles E. Wilson to Dr. Schaefer dated February 24, 1961, which was given to me to hand-deliver to Dr. Schaefer in Zurich by the Trustee.

Q Did you do that?

A Yes, I did.

MR. O'DONOGHUE: I offer this, your Honor. I understand there is no objection.

THE COURT: Without objection, it will be received in evidence.

(Plaintiff's No. 102 received.)

THE CLERK: Plaintiff's 103 marked for identification.

(Plaintiff's No. 103 marked.)

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BY MR. O'DONOGHUE:

Q Can you identify that?

A Yes, I can. This is a letter of mine to Mr. Saager

dated December 20, 1960.

MR. WILSON: No objection.

THE COURT: Without objection, it will be received in evidence.

(Plaintiff's No. 103 received.)

BY MR. O'DONOGHUE:

Q At the time you delivered the letter to Dr. Schaefer in Zurich, that is the Trustee's letter of February 24, 1961, did you have any discussion with him at that time?

A Yes, I did.

Q Can you tell us the content of that discussion?

A Yes.

MR. WILSON: Establish who were present, Mr. O'Donoghue.

THE WITNESS: Only Dr. Schaefer. I went directly to Dr. Schaefer's office at the Union Bank. I had a lengthy -- hour-long, at least -- meeting with him, and pursuant to the instructions given me by the Trustee, I delivered the letter.

Dr. Schaefer read it. I, thereupon, told Dr. Schaefer that I understood that he intended to come to the United States, and that I was asked to inform him by the Trustee that under  
343 no circumstances should he do that at this time, that Mr. Charles M. Spofford would be coming to Zurich in a few days, that Mr. Spofford had been framing out a Memorandum of the



Trustee to be delivered to the Attorney General, and that I was to be there in Zurich to be available to help Mr. Spofford on this.

Dr. Schaefer stated to me that he was highly impatient, that he insisted upon dealing only at the top, and that he was insisting upon a meeting with Attorney General Robert Kennedy, and that he was determined to go to the United States to get this meeting with the Attorney General.

I stated to Dr. Schaefer that the Trustee informed me that the new Kennedy Administration still had not completed its staff assignments in the Department of Justice, and that the new Assistant Attorney General, Mr. Orrick, had to be oriented in this matter before any new posture could be arrived at and disposition of the case by the Trustee; and that the Trustee insisted that Dr. Schaefer not come to the United States, and I would stay there until Mr. Spofford got there. That was the substance of the discussion.

Dr. Schaefer then decided that he would stay and not come to the United States at that time.

344

BY MR. O'DONOGHUE:

Q Did Mr. Spofford then come to Zurich?

A Yes, Mr. Spofford came to Zurich a few days later.

Q Did you have any meetings with him and members of

the Interhandel Board at that time?

A Yes, I did. I had a meeting with him upon his arrival. He took me to lunch at his hotel and asked me to orient him as to what had transpired in meetings with Dr. Schaefer, had I delivered the letter, and what had I done.

I reported what I had done. He told me he had in his possession first drafts of Memorandum, and the Trustee instructed him to deliver them to me, and not leave them out of our hands and not deliver them or do anything with them unless I would check over the text and copy. So, he handed me at that point, at noontime, at the Baur-oau-lac Hotel his first work product as counsel for the Trustee on the Memorandum.

I then was asked by him some factual background about Dr. Sturzenegger and his control of Interhandel before he had sold his Preferred Stock, and various details of the background.

Then, pursuant to the instructions of Mr. Spofford, I went to my hotel and started working on this Draft. I went and obtained from the Zurich University Law Library the  
345 Hague Memorials on The Hague matter, in other words, the proceeding before The Hague World Court, and I remember I stayed up until almost 2:00 a.m. into the night working on this First Draft.

The next day, Mr. Spofford and I had a meeting with Mr. Saager initially; and then Mr. Saager, Mr. Spofford, Dr. Schaefer and I had about a three-fourths of an hour meeting in Dr. Schaefer's office. Mr. Saager was emphatic in support of the Trustee and in support of restraining Dr. Schaefer in his determination to see the Attorney General at that time.

Mr. Spofford, in the meeting, outlined to Dr. Schaefer and to Mr. Saager and myself the great importance of permitting the United States Government to be fully oriented on all of the background matters before being pushed into settlement negotiations.

Q How long were you in Zurich on this trip?

A I believe I was there eight or nine days approximately a week or more.

Q Have you told us everything you did on that trip?

A Oh, no, by no means.

Q Can you summarize fairly briefly what else you did?

A Yes. After the meeting with Mr. Spofford and Dr. Schaefer and Mr. Saager, the decision was made that Mr. Spofford and I would stay in Zurich and continue to work on  
346 the Trustee Memorandum; and we were given an office and we were given the valued help of Dr. Ulrich Wehrli in this. We knew, we recognized that Dr. Schaefer had stated to us that he was under pressure from stockholders, and we drew up Memoranda during that trip which would be agreements between

the Trustee's lawyer, the Trustee, as to inviting Dr. Schaefer -- that Dr. Schaefer was to be invited over to the United States at the earliest opportunity by the Trustee in order to have the Trustee, in the due course affecting his duties under his powers, that Dr. Schaefer could be invited over.

Also, the subject came up that Dr. Schaefer could be made an ambassador-extraordinary from the Swiss Government during such a visit. And that Mr. Spofford, during these meetings with Mr. Wehrli and I -- Dr. Ulrich Wehrli and I -- we worked for long hours on drafts and re-drafts of the Memoranda, all in the strictest confidence and secrecy. And during the course of those days, I recall that Mr. Spofford left our meeting in Dr. Wehrli's office and went up for a meeting with Dr. Schaefer, in Dr. Schaefer's office.

And I remember that Mr. Spofford came down to see me, and he was a little bit blanched, and I said, "What's wrong, Chuck?" And Mr. Spofford said, "Well, I can't figure this fellow Schaefer out, but he just told me in his office that he was visited by somebody from the United States who  
347 "told him that he could settle this matter in the United States with the Kennedys, with money." Mr. Spofford said, "He must be out of his mind thinking that." Then Mr. Spofford said to me, "Let's do the best job we can here, Bob; finish and get back to New York to see the Trustee."

THE CLERK: Plaintiff's Exhibit No. 104 marked for identification.

(Plaintiff's Ex. No. 104 marked.)

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's Exhibit 104 for identification and ask you if you can identify that.

A This is the Memorandum drawn up that I mentioned earlier in my last answer, drawn up in Union Bank, Zurich, for Dr. Schaefer, dated March 8, 1961, on the subject of the Procedures Under the Trustee With Respect to the Memorandum of the Trustee, for the Attorney General.

MR. WILSON: May I make one inquiry, your Honor?

THE COURT: Yes.

VOIR DIRE

BY MR. WILSON:

Q Mr. Schmitz, the longhand writing on the first page of Exhibit 104 for identification, whose writing is that?

A Mr. Spofford's.

Q Was this applied simultaneously with the preparation  
348 of the document in Zurich?

A This was--- The Memorandum which was---

Q No, no. I'm asking whether Mr. Spofford wrote this in longhand in Zurich at the time this paper was produced?

A Yes, the date is marked on there.

Q Well, this says, "Memorandum prepared in Zurich 3/7/61 outlining purpose of Memorandum of.." Can you tell me what this symbol is at the front page of Number 104 -- just that (indicating)?

A It looks like 7 period 5.

Q Does that make any sense?

A Well, the purpose of the Memorandum of the Trustees of -- Was it May 7th -- it could be the day and the month. I would have to assume it's the date. The Trustee's Memorandum has a date on it.

Q The point is, you saw Mr. Spofford inscribe this in Zurich with his handwriting?

A No, I didn't. I recognize his hand. You asked me whose hand it was. I said that was his hand.

Q I notice, for example, the first page of Exhibit 14 is in ribbon type, whereas the attachment of two pages, entitled "Memorandum" is a carbon copy and is dated one day later than the first page.

A I recall in Zurich -- This was typed in Zurich here.

349

Q Wait a minute. By "this," you mean the first page? You were pointing to the first page.

A I will read it, please. (Reading) Well, this is what we worked out in Zurich with Dr. Schaefer.

Q Again, do you mean the first page of 104 or the

whole thing, all three pages?

A (Reading) This was all done in Zurich.

THE COURT: All three pages?

THE WITNESS: Yes, sir.

BY MR. WILSON:

Q Would you say they were done in two different days?

A Well, we were typing, working for days. I know we worked out several drafts with Dr. Schaefer because there were repeated meetings between Spofford and Schaefer on formulating this conclusion.

Q Do you know the significance of them being dated consecutive days?

A We were working on consecutive days.

Q You don't know when Mr. Spofford wrote this longhand?

A I don't know.

MR. WILSON: I have no objection.

THE COURT: Without objection, it will be received.

BY MR. O'DONOGHUE: (Plaintiff's 104 received.)

Q When did you return to the United States?

350 A I returned to the United States about March 10, I think, or 11th.

Q What did you do when you got back here?

A I reported back to the Trustee about my work in Zurich and my assignment for him, my work for him.

Q And thereafter, what did you do?

A     Thereafter, the Trustee asked me to keep myself available to help Mr. Sam Pryor on successive drafts of the matter, and the Trustee directed me to spend the time with my father, and he said he wanted -- that the Trustee Memorandum was not to go into the merits and was a document to be submitted to the Government, subject to the purposes for the Department of Justice as to the new posture on the case, and to settle the case, and that he needed from me my time and efforts to spend time with my father, and to give him an affidavit from my father based upon factual material in the background of the management of the General Aniline & Film Company and the seizure of the company during the war, et cetera, which had originally been asked for Interhandel, of him, when he first started. So, I undertook to do that.

MR. WILSON: Excuse me, Mr. O'Donoghue. I was listening but I didn't get the person to whom the affidavit was to be delivered.

351           THE WITNESS: It was to be delivered to Interhandel's Trustee.

BY MR. O'DONOGHUE:

Q     From what period of time did you work on that proposed affidavit?

A     I worked--- That affidavit was verified, as I recall, around the middle of--- Well, I worked on it



and it was virtually completed around the end of October, and it was verified in November.

MR. WILSON: What year?

THE WITNESS: 1961.

MR. WILSON: 1961?

THE WITNESS: Yes, Mr. Wilson.

BY MR. O'DONOGHUE:

Q Was the Memorandum for the Trustee ultimately completed?

A Yes, it was.

Q When was that finished, do you know?

A As I recall, it was finished in May, Mr. O'Donoghue.

Q What was done with it after it was completed?

A I was informed by the Trustee and by Mr. Spofford that it was delivered to the Attorney General's Office.

Q At about what time?

A About May, sometime in May. I was never given the exact date.

352 THE CLERK: Plaintiff's Exhibit 105 marked for identification.

(Plaintiff's Ex. 105 marked.)

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's Exhibit 105 for identification, and ask you if you can tell us what that is.

A This is a duplicate original of the Interhandel Controversy Memorandum submitted by Charles E. Wilson, Trustee, dated 24 April 1961, signed by Charles E. Wilson.

MR. WILSON: May I inquire?

VOIR DIRE

BY MR. WILSON:

Q Mr. Schmitz, is this the Final Draft which was submitted to Government officials?

A This is a duplicate original, yes.

Q Do you have the earlier drafts?

A Yes, sir.

Q Do you have drafts with any of my revisions on them?

A No, sir, I have only drafts with my revisions.

MR. WILSON: No objection.

THE COURT: Where is it?

MR. WILSON: Do you want it?

THE COURT: I want the Clerk to have it.

Without objection, it will be received in evidence.

353

(Plaintiff's 105 was received in evidence)

BY MR. O'DONOGHUE:

Q Did Dr. Schaefer come to the United States about this time?

A Dr. Schaefer came to the United States at the time of the "Bay of Pigs" invasion.

Q I think maybe it would be more helpful now if

you would give us the date rather than an historical event.

A My problem is that the "Bay of Pigs" strikes in my mind as -- It was sometime in April, I think, of 1961---

Q --that Dr. Schaefer came?

A Showed up in New York. Yes, came to New York.

Q Can you tell us about his visit? Did you meet with him?

A He called me on the telephone. I did not meet with him.

Q Do you know whether the Trustee, Mr. Charles E. Wilson, met with him?

A Mr. Charles E. Wilson informed me that he met with him.

Q Did he tell you what was discussed at the visit?

A Yes.

Q What was that?

A Mr. Charles E. Wilson told me that Dr. Schaefer arrived in New York, that he was uptown in his office. He  
354 stated that Dr. Schaefer insisted that Mr. Wilson, Mr. Charles Wilson, come down immediately to see him at Union Bank's New York agency, and Mr. Wilson said he went down to see Dr. Schaefer, and Dr. Schaefer said that he was here for the purpose of seeing Attorney General Robert Kennedy, and he wanted an immediate appointment with Attorney General Robert Kennedy, and also I believe he said he wanted to see

Mr. Allan Dulles.

Mr. Wilson, Trustee, told me that he told Dr. Schaefer that the country was in a state of danger, that he would have no part of imposing upon the Attorney General at that moment; that the agreements between the Trustee and the Department of Justice were that the Trustee should undertake the conclusory phases of the negotiations after delivery of his Memorandum, not before that; that the agenda of the Department of Justice had to fit in with the program of the Trustee to orient the Government, and that he told Dr. Schaefer that under no circumstances would he go with Dr. Schaefer to Washington, and that he did not approve of his seeing the Attorney General.

He told me Dr. Schaefer was so insistent that he called in Mr. Spofford and said Mr. Spofford should accompany Dr. Schaefer to Washington, which Mr. Spofford did. This was the first information I had about it.

Q You say, Dr. Schaefer called you on the telephone?

355 A Yes, he called me on the telephone at my home in Greenwich, after he had been to Washington.

Q What was the gist of that conversation?

A Well, he told me that he couldn't see me on that trip, that he had been to Washington, and that my recollection of the conversation was that there was no real, specific material content to it, as to what actually had transpired

between him and other third-parties, unknown to me, during this trip of his.

Q Did he say whether he had seen the Attorney General?

A No, he did not.

Q He didn't say, or he said he did not?

A He didn't say.

Q I show you what has been marked Plaintiff's Exhibit 106 for identification.

(Plaintiff's Ex. No. 106 marked.)

I ask you if you can tell me what that is.

A That is a copy of a letter which I wrote to Dr. Wehrli. I gather it is a typed transcription of a letter I wrote to Dr. Wehrli, dated May 16, 1961.

MR. WILSON: No objection, your Honor. The original is in handwriting.

THE COURT: I understand. It will be received in evidence.

(Plaintiff's Ex. 106 received.)

356

THE CLERK: Plaintiff's Exhibit 107 marked for identification.

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BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's Exhibit 107 and ask you to tell the Court what that is.

A This is an original letter to me from Dr. Wehrli

from Union Bank of Switzerland dated May 26, 1961.

MR. WILSON: No objection.

THE COURT: It will be received.

(Plaintiff's Ex. 107 received.)

THE CLERK: Plaintiff's Exhibit 108 marked for identification.

(Plaintiff's Ex. 108 marked.)

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you Plaintiff's Exhibit 108  
357 for identification and ask if you can identify that.

A This is a letter sent to me by Dr. Schaefer on May 29, 1961, in the German language, with translation appended.

MR. WILSON: No objection.

THE COURT: It will be received.

(Plaintiff's 108 received.)

THE COURT: May I see that? You may proceed, Mr. O'Donoghue.

BY MR. O'DONOGHUE:

Q Thank you. During the period of the late Spring and the Summer of 1961, what did you do in relation to the Interhandel matter?

A I was continuing to work as directed by the Trustee to prepare the material background from sources, from my father. I was going through many documents,

interviewing my father, helping him on the drafts of his affidavit.

The Trustee asked me to write up Memoranda for Mr. Spofford on the exceptional matters of the vesting, get matters out respecting the hearings before the Senate Judiciary Committee, testimony adduced before the Committee on the conspiracies which were allegedly undermining the United States Government during World War II, numerous things of that sort -- a great variety of work I would be  
358 asked by the Trustee as the occasion demanded in order to be asked questions by him that he needed answering.

I would travel to see Mr. Spofford and the Trustee would call me in and speak to me some of his concerns about the difficulties he was having with the interjections by third parties into the matters in Washington. The Trustee would tell me about the fine cooperation that he was having and Mr. Spofford was having from Mr. Orrick.

MR. WILSON: And from Mr. Wilson.

THE WITNESS: A variety of things as of day by day.

THE CLERK: Plaintiff's Exhibit 109 marked for identification.

(Plaintiff's No. 109 marked.)

BY MR. O'DONOGHUE:

Q Mr. Schmitz, I show you Plaintiff's 109 for identification and ask you if you can say what that is.

A This is a letter of mine to the Trustee dated August 15, 1961, with enclosures drafted by me for the Trustee to assist the purposes of the Trusteeship.

Q You say "enclosures," is it all in the body of the letter?

A It's marked "enclosures," so there must have been something else with it.

\* \* \*

359

BY MR. O'DONOGHUE:

Q Is that what is referred to as an enclosure in that letter to the Trustee?

A Could I please see the letter, the dates again?

Q Sure.

A My testimony is, yes, this is an enclosure that was delivered.

THE COURT: With the letter?

THE WITNESS: Yes.

MR. WILSON: Then, <sup>if</sup> it may be considered a part of 109, we have no objection to it.

360

THE COURT: Is it agreeable, Mr. O'Donoghue, for it to be treated as a part of 109?

MR. O'DONOGHUE: Yes.

THE COURT: Now, you are offering it in evidence with the enclosure?

MR. O'DONOGHUE: Yes.



THE COURT: It will be received.

(Plaintiff's No. 109 received.)

THE CLERK: Plaintiff's Exhibit 110 marked for identification.

(Plaintiff's Ex. 110 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 110 for identification and ask you if you can identify that.

A This is a letter of mine to Dr. Ulrich Wehrli, Union Bank dated August 16, 1961.

MR. WILSON: Mr. O'Donoghue, there are two letters of the same date.

MR. O'DONOGHUE: This is what I am offering.

\* \* \*

351 MR. WILSON: I object to it unless he offers the other.

THE COURT: Objection is overruled. It will be received in evidence.

362 (Plaintiff's No. 110 received.)

THE CLERK: Plaintiff's Exhibit 111 marked for identification.

(Plaintiff's No. 111 marked.)

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's 111 for identification and ask if you can tell me what that is.

A This is a typed copy dated August 24, 1961, which appears to be a copy of a handwritten letter of mine to Mr. Saager.

MR. WILSON: No objection.

THE COURT: It will be received.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's 112 for identification and ask if you can identify that.

A This is an original letter to me with postmarked envelope from Mr. Saager, Union Bank, and a translation.

THE COURT: What's the date of it.

THE WITNESS: Beg pardon. September 1, 1961.

MR. WILSON: No objection.

353

THE COURT: It will be received.

\* \* \*

BY MR. O'DONOGHUE:

Q I show you Plaintiff's No. 113 for identification and ask if you can tell us what that consists of.

A This is a photostatic copy of a letter of mine to Mr. Bruno Saager dated September 8, 1961.

MR. WILSON: Two pages of handwriting, Mr. O'Donoghue?

MR. O'DONOGHUE: Yes.

MR. WILSON: No objection.

THE COURT: It will be received.

(Plaintiff's Ex. No. 113 received.)

THE CLERK: Plaintiff's Exhibit 114 marked for identification.

(Plaintiff's No. 114 marked.)

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's 114 for identification and ask you if you know what that is.

\*\*\*

364

THE WITNESS: (Reading) Yes, it is a translation of a letter to me by Saager dated September 12, 1961.

MR. O'DONOGHUE: I understand there is no objection to it.

THE COURT: Without objection, it will be received.

(Plaintiff's No. 114 received.)

\*\*\*

366

BY MR. O'DONOGHUE:

Q I show you No. 115, Plaintiff's Exhibit, for identification and ask if you can identify that.

A This is a translation of a personal letter of mine to Mr. Saager dated September 18, 1961.

\*\*\*

368

THE COURT: 115 is admitted into evidence without objection.

\*\*\*

BY MR. O'DONOGHUE:

Q Mr. Schmitz, did Dr. Schaefer come to this

country again in 1961 that you are aware of?

A Yes, he did.

Q Did you see him at that time?

A No, I did not.

Q You knew he was coming?

A Yes.

Q How did you know that?

A The Trustee informed me that he was coming or intended to come.

Q He advised the Trustee of that by telegram, or something?

A The Trustee simply told me that Dr. Schaefer was  
369 intending to come, and I was asked by the Trustee to call  
Mr. Saager on the Trans-Atlantic telephone to try and  
stop him from coming.

MR. WILSON: Are we fixing any time on this at all?

MR. O'DONOGHUE: I'd like to try to.

THE WITNESS: This was in October of 1961.

MR. WILSON: All right. That's fine.

BY MR. O'DONOGHUE:

Q Can you fix it any more accurately than that?

\*\*\*

THE WITNESS: He came about the 28th.

BY MR. O'DONOGHUE:

Q Of October?

A Yes, sir.

370

Q Now, you say the Trustee called you into his office and told you about it. What did he tell you?

A The Trustee called me into his office and said, "Bob, I want to tell you that the forces of spols are hard at work."

I asked what he meant by that. He said, "Well," he had been informed that the Department of Justice had complained to Mr. Spofford about interferences in the Conclusory negotiations, and that he heard that a lawyer was going over to Switzerland, and that Schaefer had intended to make some move to see the Attorney General without his knowledge or consent. And then, over the period of the next 10 or 20 days, I was informed about the anxiety about this. I was asked to go down about this to speak to, to see Mr. Spofford.

I recall I went to Mr. Spofford to deliver to Mr. Spofford some Memorandum, and I recall Mr. Spofford told me that -- He said, "Bob, this matter has been straightened out. It's been a 'can of worms' and we have it straightened out," and he said, "With Schaefer coming over here, I don't know what's going to happen."

So, I recall that the Trustee asked me to call Mr. Saager to try and get Mr. Saager to prevail upon Schaefer not to come; and so I did place a telephone call to Mr. Saager on or about the 10th of October. There ensued the

371 period of the next days, at which time, when the Trustee, on or about the 25th or 26th of October, told me that he heard that Schaefer was definitely planning to come, and he read to me in his office a copy of a letter which had been sent to Mr. Saager by Benjamin Javits, Esquire, dated as I recall, October 16th, and he read me the text of that letter to Mr. Saager of Union Bank.

BY MR. O'DONOGHUE:

Q Prior to Dr. Schaefer's coming, did you have occasion to communicate with him by cable?

A Yes, I sent him a telegram and tried to stop him from coming.

THE CLERK: Plaintiff's Exhibit 116 marked for identification.

(Plaintiff's Ex. No. 116 marked.)

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's Exhibit No. 116 for identification and ask you if you can tell us what that is.

A The first document is a 2-page cable of mine to Dr. Schaefer dated October 16, 1961. The second appended cable is a cable from Dr. Schaefer to me dated October 17, 1961.

MR. WILSON: No objection, your Honor.

372

THE COURT: It will be received in evidence.

(Plaintiff's No. 116 received.)

MR. WILSON: You are giving the two cables one

THE COURT: That's right.

MR. O'DONOGHUE: If you don't mind -- they seem to be attached together.

THE CLERK: Plaintiff's Exhibit No. 117 marked for identification.

(Plaintiff's No. 117 marked.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's 117 for identification and ask if you can tell us what that is.

A This is a carbon copy of a cable sent by me to Dr. Schaefer dated October 18, 1961.

Q Was this a reply to Dr. Schaefer's cable---

A Yes.

Q --the previous exhibit?

MR. WILSON: No objection.

THE COURT: It will be received.

(Plaintiff's No. 117 received.)

BY MR. O'DONOGHUE:

Q Did you meet with the Trustee after Dr. Schaefer's visit to this country?

A I met with the Trustee while Dr. Schaefer was still

373 in this country.

Q Is that a conversation you were telling us about a few minutes ago, or is this a subsequent one?

A Subsequently.

Q Would you tell what occurred at that meeting with the Trustee?

A Yes. This was on or about October 30th, 1961, in New York City. The Trustee called me to his office and said it was urgent. I went over, and the Trustee stated to me that he had never been so exercised in his life, that he had just come from a meeting with Mr. Spofford and Dr. Schaefer at the Links Club; that Mr. Spofford and he had been informed by Dr. Schaefer that Dr. Schaefer had, without their knowledge and consent, gone into the Department of Justice and gone into the Attorney General's Office, and there had made an offer to the Government without his knowledge and consent, which he said was a "Christmas present to the Government."

And the Trustee stated to me. He said, "Bob, it's just frightful." He said, "It's the worse thing that could be done." He said, "Schaefer has acted to the damage of his own stockholders."

I said, "Mr. Wilson..." I was consternated hearing this. Mr. Wilson stated to me that Chuck Spofford



374 was so furious at the Links Club that he threw his hat on the floor, and wanted to quit as attorney in the case, but that Spofford was simply livid at the idea of this surreptitious, what he said was surreptitious activity on the part of Dr. Schaefer.

MR. WILSON: I object to the characterization.

THE COURT: He's quoting language. He's quoting a conversation.

MR. WILSON: I don't understand that surreptitious was part of the conversation.

THE COURT: Did you say it was?

THE WITNESS: Yes, it was. He said Spofford was just livid about it, and Spofford would not even talk to him any more about it, that Spofford really had quit, that Spofford was through.

Charlie Wilson sat there and said, "Bob, as Trustee I don't lack guts, I don't lack courage, but," he says, "This is a terrible situation, -- once the confidence is lost between the Trustee and the Government and once the confidence is lost to the pursuit of a settlement based upon principle," He said, "What are we going to do?"

So, I at that time, after the meeting, went back to my office two blocks away, and I wrote down a contemporaneous Memorandum of all the things the Trustee told me at that point

375 in time of the sub-points that he brought out about this meeting that I was informed about that the Trustee said occurred between the Attorney General, Robert Kennedy, and Schaefer.

BY MR. O'DONOGHUE:

Q Subsequent to that, did you write a letter to Mr. Saager?

A I did so, yes.

THE CLERK: Plaintiff's Exhibit 118 marked for identification.

(Plaintiff's Ex. 118 marked.)

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's 118 for identification asking you if you can to tell us what that is.

A That is a photostat of a letter of mine to Mr. Saager dated Monday, November 6, 1961.

\*\*\*

377 THE COURT: Very well. Let it be understood it is received in evidence under those conditions, that you will provide a clear copy to replace it.

MR. STRICKLER: Yes, your Honor. (Plaintiff's No. 118 received.)

MR. O'DONOGHUE: Your Honor, I have put these documents in individually up until now for two reasons, one, because they fitted into a sequence of events in the

narrative and also because I realize Mr. Wilson was having questions about some of them, wanting to examine on them and so forth.

I wonder if we might save time -- as all of these have been initialled, I think -- save time by simply presenting them as a group, and then finishing up on the Direct Examination of Mr. Schmitz by a few questions.

THE COURT: Is that satisfactory?

MR. WILSON: You certainly may. I wish you had done this this time yesterday.

\* \* \*

378 THE CLERK: Plaintiff's Exhibit 119 marked for identification.

MR. O'DONOGHUE: This is a telegram from Mr. Saager to Mr. Schmitz dated November 15, 1961.

(Plaintiff's Ex. No. 119 marked.)

MR. WILSON: No objection.

THE COURT: As I understand, probably all of these will not be objected to.

MR. O'DONOGHUE: I think for the most part.

379 THE COURT: All right. Let's treat them separately. This one is received in evidence.

(Plaintiff's Ex. No. 119 received.)

MR. WILSON: I would suggest that they just be all marked and we will interrupt if we don't agree to one.

Otherwise, they go in with our agreement.

MR. O'DONOGHUE: I have to identify and show them to you or something. I'll just hand them to you.

All right. Will the record, however, be clear that these are being---

THE COURT: That's what I want to be sure. They are being marked and offered and being received in evidence unless objection is made to any one of them by counsel for the defendant.

MR. O'DONOGHUE: I had better identify them, though, by description and the number.

THE COURT: Yes, that's right.

MR. O'DONOGHUE: Plaintiff's Exhibit 120 is a letter dated November 30, 1961 from Robert Schmitz to Dr. Ulrich Wehrli.

Plaintiff's Exhibit 121 is a letter to Mr. Bruno Saager from Robert Schmitz dated December 9, 1961.

Plaintiff's Exhibit 122 is a letter from Robert Schmitz to Union Bank of Switzerland, Attention: Dr. Ulrich

380

MR. O'DONOGHUE (Continuing): Number 123 is a letter in German, together with a translation, from Dr. Schaefer to Mr. Schmitz, dated January 9, 1962.

Number 124 is a photostat of a letter to Dr. Schaefer, dated January 17, 1962, from Robert A. Schmitz.

Number 125 is a cable from Mr. Schmitz to Mr.

Saager, dated January 16, 1962 together with a telegram from Miss Fritz, Secretary, dated January 18, 1962.

Number 126 is a letter from Mr. Saager to Mr. Schmits dated February 13, 1962.

Number 127 is a carbon of a letter to Dr. Schaefer from Mr. Schmitz dated February 14, 1962.

MR. WILSON: One typewritten page.

MR. O'DONOGHUE: Yes.

MR. WILSON: Mr. O'Donoghue, this letter refers to the use of an affidavit that was prepared by Mr. Schmitz for his father and which his father executed. Are you going to offer the affidavit?

MR. O'DONOGHUE: No, I hadn't planned to.

MR. WILSON: May I read this again please?

MR. O'DONOGHUE: Yes.

MR. WILSON: (Reading) As in the past, if you don't want to do it, I'll not---

MR. O'DONOGHUE: Do you want to object?

381

MR. WILSON: I will not object. I will get it in, in my way.

\* \* \*

MR. O'DONOGHUE: Plaintiff's 128 is a letter from Dr. Schaefer to Mr. Schmitz dated February 22, 1962, in German, with a translation.

\* \* \*

MR. O'DONOGHUE: 129 is a letter from Mr. Saager to Mr. Schmitz dated February 27, 1962.

\* \* \*

MR. O'DONOGHUE: Exhibit 130 -- this should have the same number. This is a translation. Just attach it. 130 is a letter dated April 19, 1962 from Mr. Saager to Mr. Schmitz together with a translation.

I think that's all I need to offer.

382 I would like to ask the witness some further questions.

\* \* \*

THE COURT: As I understand it, from 119 to an including Exhibit 130---

MR. WILSON: We agree may be admitted.

THE COURT: --are agreed may be admitted, and in the light of that agreement, they are received in evidence.

\* \* \*

BY MR. O'DONOGHUE:

Q Mr. Schmitz, there are reference in that correspondence to an affidavit of your father, are there?

A Yes.

Q Was that delivered to anybody at Interhandel?

A Yes.

Q When?

A It was delivered by me upon instructions of the Trustee in March of 1962 in Zurich, at Union Bank.

Q Did you make claims against Interhandel for compensation?

383 A Yes. After the revelations to me by the Trustee of the activities of Dr. Schaefer going to the Attorney General's Office, I consulted the Trustee about my 5 percent commission out of the avails of the settlement that would be forthcoming; and I told the Trustee that I would have to protect my rights by writing a letter forthwith to Dr. Schaefer about that, and I went to him with a draft of the letter for his approval.

After he went over it, he took it down to Mr. Spofford's office, and I went and mailed it to Dr. Schaefer. To make sure there was no mistake about it, I also sent copies of that letter to Mr. Brupbacher and Mr. Saager. I mailed the letter on January 17, 1962.

Q Did you have any discussions with any of the people at Interhandel aside from the correspondence or telegrams concerning your claim during this period of the end of 1961 and Spring of 1962?

A When I went to Zurich on behalf of the Trustee to deliver my father's affidavit, I went to Union Bank. By that time, Mr. Saager and Mr. Brupbacher had been made members of the Board of Directors, which they had not previously been; and I had with me my copy of my letter, and told them that I would enforce that at the earliest opportunity, but that

meanwhile, Charles E. Wilson was still Trustee.

I don't know to whom he---

384

A (Continuing) I was addressing this to Mr. Saager

and Mr. Brupbacher, and that the one direct line of Trusteeship was the one thing that was the criterion that had to be abided by and honored. And I delivered the affidavit to Mr. Saager, and he asked me if I could wait to have Mr. Brupbacher please read it. So, I waited a day, and then a meeting was set up the next day at their request, to be with Mr. Charles Brupbacher.

So, I had a meeting and went over this affidavit and the material significance of it for the cause of Interhandel in the United States. And I recall a meeting at which Dr. Ulrich Wehrli also attended -- In fact, we were in Mr. Saager's office for quite some time -- I think it was an hour-and-a-half or two hours.

I recall Mr. Brupbacher stating to me that he had read the affidavit, and he considered this a most valuable added strength for Interhandel in the dealings with the United States Government.

He told me that the dealings of Schaefer with Kennedy and the way he got access to the Attorney General Kennedy were most dangerous, and he did not approve of them.

Mr. Brupbacher said to me, that as a director of the company he wanted to know if I had any copies of Charles



E. Wilson's trust powers. I said, "Why?" He said, "Well,  
385 "Dr. Schaefer has concealed them from me. I haven't even  
had a chance, as a director of the company, to see these  
trust powers.

So, after this meeting, I went and had a copy  
photostated and delivered to Mr. Brupbacher at his request.  
During the meeting, Mr. Brupbacher stated that what Dr.  
Schaefer did was without authorization of the Board and  
violated the Board of Directors.

I said, "Well, I remember clearly stating to these  
gentlemen that it was my duty, I felt, and their duty to  
abide by the covenants expressed in the Board of Directors'  
resolutions and the trust powers, and that it would be  
catastrophic for the entire cause if this sort of end-running  
were allowed to continue. I put it up to them, that as  
directors of the company, I would not have any truck with  
this, and the Trustee would not either, and that this thing  
could be in litigation for years to come and be a settlement  
long delayed if they did not abide by the agreements to which  
they had bound themselves.

I told them that, however, the Trustee, despite  
this activity on the part of Dr. Schaefer, which the Trustee  
had stated to me was unequivocally a gross violation of the  
powers of trust, that the Trustee had stated to me that he  
had duties to other equities, and he had duties to the

386 stockholders of the company, and that he was simply not going to walk out as Trustee; and that my purpose for being in Zurich was to do all things I could in order to try and rehabilitate the situation and try and hope to get it back on the line.

I expressed to these gentlemen what had been stated to me by Mr. Charles M. Spofford -- Mr. Spofford who was such an outstanding and valuable attorney and had such good relationships with Mr. Orrick in the Department of Justice; that Mr. Spofford simply would not speak to me about this matter for well over a month after the visit of Dr. Schaefer. And it was only upon repeated requests and attempts to talk to Mr. Spofford that he would even consider to do this; that I knew that if Mr. Spofford were going to withdraw as attorney, because Mr. Spofford had stated to me that he did not want to get Davis, Polk, Wardell, etc. involved in hostile -- malpractice situation.

THE COURT: You're speaking right fast.

THE WITNESS: And Mr. Spofford had told me that he was very much upset at having heard that Mr. John Wilson had gone to the Attorney General's office with Dr. Schaefer.

And I told these gentlemen that the purpose of the affidavit of my father was inconsistent with the very original request in October of 1959 when Interhandel stated

387 that to me in Zurich, that they had to have valid knowledge from the authentic recollections of my father as the former Trustee and former exclusive voting proxy agent of Interhandel and President of General Aniline & Film, as to actually what was done in the pre-war years by the company, and what the significance of the whole thing was, and how it came to be seized.

I stated to these gentlemen, in this meeting, that the Trustee had to, on the one hand, rely on the advice of his counsel on matters legal with the Government on the conditions for settlement and negotiations to enter into a stipulation with the Government; but by the same token, the Trustee, in exercising his judgment and discretion in this matter, had deemed it vital to have this affidavit of my father's. And that Mr. Spofford, when I spoke to him in his office at Davis, Polk, Wardell, et cetera, prior to my trip, had stated to me that he felt that this affidavit of my father's in the possession of the Trustee should be delivered to the United States Department of Justice and delivered simultaneously with my delivery of the same document in Zurich to directors of Interhandel. And that I had explained to these gentlemen that I had arranged that my father's attorney in Washington, Mr. Gordon Echol, be directed by my father and authorized by my father to deliver

388 this affidavit to the Department of Justice.

I stated to these gentlemen that the Department of Justice, the Attorney General, who was the defendant in the 9-A case had not had access to this affidavit one minute prior to the moment they had as directors of the company, and that I was carrying out the obligations of the Trustee to see to it that they would have the benefit of every possible piece of material information that would help them recover the subject matter assets of their General Aniline & Film Corporation.

MR. WILSON: Excuse me. I don't want to interrupt this narrative. If the Court please, if I am not burdening the Court, please, at this point: There was a letter of January 17th of which Mr. Schmitz said he sent copies to Mr. Saager and to Mr. Brupbacher. Then, he said that he had this meeting in Zurich with Messrs. Saager and Brupbacher on the occasion of delivering the affidavit.

May I have it developed as to what time a meeting was held in Zurich? I am not sure whether it was on the heels of the letter, at the same time of the delivery of the letter, or later on.

THE COURT: Can you tell us when you had the meeting in Zurich?

THE WITNESS: I testified the letter was January 17th, and that my meeting was at least a month later -- I mean,

306 at the time of the delivery of the affidavit.

MR. WILSON: Thank you.

BY MR. O'DONOGHUE:

Q Mr. Schmitz, how long did the Trusteeship continue, if you know?

A The Trusteeship continued until November, approximately November 12th or 13th, around the middle of November, 1962.

Q What was done then?

A What was done then was that the Trustee--- Well, prior to that---

Q No. What was done then?

A What was done then? The Trustee returned his powers to the Swiss.

Q During 1962, did the Trustee request that you perform any services for him aside from what you have already narrated?

A Yes. The Trustee asked that I maintain myself available for him because he said that he had a duty to various equities under his charge, and that he had to satisfy these equities in the United States, and that he had to work toward a settlement.

He said that if Mr. Spofford withdrew as an attorney, he talked to Mr. Clark Clifford, and Mr. Clark Clifford

390 would be willing to represent him.

MR. WILSON: Who had talked to Mr. Clark Clifford?

THE COURT: The Trustee.

THE WITNESS: The Trustee.

BY MR. O'DONOGHUE:

Q What did you do by way of performing any services aside from holding yourself available?

A Well, I was just testifying about my trip to Zurich, delivering the affidavit.

Q Yes. And after that?

A My services continued in Zurich. I was at Union Bank. I had had this long meeting with these gentlemen. They had assured me that Mr. Brupbacher would come over to the United States in several days to see the Trustee, and that they would disavow the actions of Dr. Schaefer, and that they wanted to stick by the company's duties under the Trustee mandate.

And I left the office and I recall I went out on the street, and Dr. Wehrli, who is sitting in this courtroom, came upon me on the street in front of the bank and he said to me, "Bob," he says, "These fellows aren't telling you the truth." He says, "They are right now dealing with the Government and they are going to have a

391 meeting at two o'clock this afternoon.

Q What fellows?

A Schaefer, Saager and Brupbacher. And I said, "What?" And he said, "Yes." He says, "We were never closer to a settlement than this," and I just simply blew up.

I said, "Well, I'll be---" I don't know what I said, but it was plenty. I said, "Well, that's it." I said, "I wash my hands of you."

I got on the Trans-Atlantic phone and I called the Trustee and said that I was coming back to the United States. I went then to <sup>the</sup> Cantonal Notary Public's Office and had every Memorandum that I made in Zurich notarized by the Swiss Government's Notary.

I then flew back to New York. I went to the Trustee and submitted to him my notarized Memoranda of these meetings for his scrutiny. He was outraged. He said to me, "Well," he said, "This stands to compromise the United States Government." And he said, "I don't know how I'll carry out my duties, but" he said, "I don't see how I can perform my trust under these circumstances. We have to do something to try and stop it. I won't tolerate it. I think, Bob, you owe it to the equities to go down to the Department of Justice and tell them that you have been



392 informed that they are dealing behind my back.

I sent a telegram to Mr. Orrick, who was then head of the Civil Division, and I was asked to come down to the Department of Justice. I went down to the Department of Justice, and I had a meeting in the Department of Justice with Mr. Wolf, Mr. Murray Bring, who was Mr. Orrick's assistant, and Mr. Carl Bradley, who I gather was Chief of Litigation for the Civil Division. I told the Government my position in this matter and my labors in this matter, and I delivered to the Government an affidavit which I had verified previously at the insistence of the Trustee, and which he and his attorney had read. And I told the Government that I had to tell them of my experiences in Zurich, and that material facts were being concealed which would affect the equities, and that I considered this sort of conduct would leave this situation in a mess, and that I would do all I could to protect these equities and go on; but I didn't see how I could possibly do more than I had, so I left the Department of Justice.

Q When did you learn a settlement had been reached between Interhandel and the United States?

A I learned that a settlement had been reached when I read it in the newspaper.

Q When was that?



393       A     Well, settlement was reached several years later, on December 20, 1963.

          Q     Were the terms of the settlement announced in the newspaper?

          A     The terms were not announced, no. They were part of an out-of-Court, inter-party Stipulation of Settlement entered into between the Attorney General of the United States, and the defendant in the subject action, and Mr. John Wilson as the Attorney-in-Fact for the plaintiff.

          Q     When did you learn of the terms of the settlement?

          A     I learned of the terms of the settlement from my--- I retained counsel at that time.

          Q     When?

          A     January 1964.

          Q     When did you learn what Interhandel's share of the proceeds of the sale of the General Aniline & Film stock was?

          A     Well, I learned what the share was from an affidavit submitted by Interhandel to the Government to the effect that they got \$145 million out of the settlement.

          Q     Did you make---

          THE COURT: Have you answered him as to when that was?

          THE WITNESS: That affidavit came to my attention

394 during the course of 1962, as part of the proceedings on my attempt, through my counsel, to intervene in the main action settlement to enforce my----

Q Did you make any demands on Interhandel for compensation in accordance with your agreement?

A Yes.

Q When?

A Well, in my letter. I filed a suit to intervene in the main action, as I stated I would in my letter of January 17, 1962.

Q After the proceeds were received, and there was put an account in the Treasury, in the name of Interhandel, did you make a demand then?

A I had been in proceedings to intervene under Section 20, Trading With The Enemy Act, which was the statutory jurisdictional basis, and thereupon, I moved to enforce an equitable lien of mine out of the premises by filing an action after the \$145 million had been deposited in the United States Treasury in an ear-marked, segregated fund as the property of Interhandel.

Q Did the replies to your Complaint deny that they owed you the money?

A Yes.

Q Under your agreement with the Swiss, when did your share become due?

395

A Not until there was a fund of avails out of which I could be paid in the United States of America.

Q Do you know when that occurred?

A The fund of avails was deposited the Tuesday after Palm Sunday, 1965.

Q Well, that's the ecclesiastical calendar. Can you tell us in the temporal calendar when that might have been?

A I think it was April 14, 1965.

Q Mr. Schmitz, did Interhandel pay you any amounts for services over the period '59 to '62?

A Not '59 to '62, no.

Q They did not pay you anything during that period?

A Oh, yes, but they didn't start paying me until October 1960.

Q What was the agreement under which they paid you anything then?

A The agreement was that, for my supplemental services that they asked of me, after I had obtained for them the Trusteeship of Mr. Charles E. Wilson, that in order for it to continue, that they paid me for these supplemental interim services, which were special services to the Trustee, \$2,000 a month payable on account only for the supplemental.

Q On account of what?

A On account of services. In other words, the \$2,000

396 a month was only a payment on account for special interim services which were the services for which I was employed at their solicitation after May 23, 19<sup>60</sup>43. And they did not start paying me for this until October of 1960.

Q What was the total amount of the payments under that interim, on-account-for-services agreement?

A Well, it was \$2,000 a month. There was a first payment of \$10,000 which was retroactive, and it was retroactive because---

MR. WILSON: Never mind why.

THE WITNESS: All right. It was \$2,000 a month, payment about the end of October-November 1960, and then \$2,000 a month on account of interim services until the end of 1961.

BY MR. O'DONOGHUE:

Q Do you know the total amount paid?

A Well, that would be---

Q For how many months then?

A I can count on my fingers: It would be about \$38,000. I would think in that order -- about \$38,000.

Q Was any reimbursement made to you for out-of-pocket expenses?

A Yes. Such expenses that I incurred in my services to their Trustee, traveling, office were reimbursed

397 to me. . But a point was reached in 1961, in which Dr. Schaefer refused to pay me for these expenses, even though I was still serving the Trustee.

Q Do you know the amount of reimbursement paid you?

A I don't know. No. I would have to look that up.

Q There was one last question: Would you state -- and you may have stated it before, but if the Court will indulge me, I would like to ask you again: What was your agreement for compensation with Interhandel?

A My agreement for compensation for obtaining acceptance by Mr. Charles E. Wilson of the specific powers of trust was that I should be paid 5 percent out of the avails of any settlement achieved in the recovery of General Aniline & Film Corporation, such payment to be deferred until such time as there were avails physically in the United States out of which I could be paid, and that it should come from no other source, and that would be subject to such conditions as set forth by the Trustee equal to what the Swiss would have, Interhandel would have.

Q What representative or representatives of Interhandel made this promise to you?

A The original promise was made by Dr. Alfred Schaefer who was the Chief Executive Officer of Interhandel, Chairman of the Executive Committee of the Board of Directors

398 in Zurich, Switzerland. And this offer was repeated to me, had been accepted by me on my commissioning to continue to do this work on October 26, 1959. And during the dealings in Zurich, prior to Paris, Dr. Schaefer agreed that a sum would be set aside, and that he would instruct the Trustee in Paris to exercise his powers so that he could pay all equities in the United States under his discretion. And Dr. Schaefer agreed that my 5 percent commission out of the avails of the settlement was to be paid by the Trustee when the the avails were in the hands of the Trustee in the United States.

Q Was any other representative of Interhandel participating in these promises, or was it only Dr. Schaefer?

A Only in those promises, Dr. Schaefer.

MR. O'DONOGHUE: I have no further questions.

\* \* \*

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CROSS-EXAMINATION

BY MR. WILSON:

Q Mr. Schmitz, did you have any written agreement with Interhandel or with Dr. Schaefer with respect to this five percent?

A I would say yes.

Q And what is the evidence of that written agreement, sir?

A It was agreed as within the powers of Mr. Charles Wilson --

Q No, no. I am referring to the five percent --

A No.

Q Was there some reason why it wasn't put into a written agreement?

A Yes, there was.

Q What was that, sir?

A Dr. Interhandel stated to me, Dr. Schaeffer stated to me, and previously Dr. Sturzenegger stated to me that the  
427 pursuit of the desired proffered trusteeship of Mr. Charles E. Wilson was so important and the circumstances surrounding the very difficult litigation, and their position in Switzerland with respect to their minority stockholder groups, that they expressly demanded that there not be written evidence of the proceedings towards the attaining of this trustee.

This was a matter of the highest confidence and they promised me that they would, upon creating this thing, make it possible for me to receive my payment out of the specific avails if I would undertake it on that basis.

Q Well, when you are speaking of "them" are you speaking collectively about Dr. Schaefer and Dr. Sturzenegger or did you mean to separate these two?

A Well, the same criteria applied originally as to Dr. Sturzenegger which were continued and accepted and established in October of 1959 and thereafter.

Q Well was the agreement with Dr. Sturzenegger for five percent?

A There was no agreement with Dr. Sturzenegger as to any percentage.

Q Did you derive from your conversations with Dr. Sturzenegger then the basis for an agreement with Dr. Sturzenegger at that time?

A No, there was no basis and I did not accept any percentage. I agreed to undertake the task for them on the  
428 understanding that the percentage would be paid, that it would be not less than two or three percent, but there was no agreement or acceptance on my part of any percentage.

Q Well, did you rely upon any observation of Dr. Sturzenegger to you as part of the basis for your claim today?

A Not whatsoever.

Q Now coming to the nature of the agreement that Dr. Sturzenegger had with you, I understood you to say and in your complaint it says and I think you confirmed it this morning, that your services for which you had earned this five percent were completed when Mr. Charles Wilson accepted the trusteeship, is that correct?

A You are asking me about an agreement with Dr. Sturzenegger?



Q No, no. I have moved over now to the one, to your agreement with Dr. Schaefer, did I say Sturzenegger?

A Yes, you did, sir.

Q I'm sorry.

A Yes.

Q All right. Thank you very much.

Your agreement, retracing the same steps with regard to Dr. Schaefer, I understand that you testified this morning that this agreement was, or so-called agreement, for your earning of the five percent, was as of the time when Mr. Charles E. Wilson, accepted the trusteeship if he did?

A My commission -- Dr. Schaefer --

Q No, could you answer my question?

A It was to be earned upon acceptance by Mr. Charles E. Wilson of the desired trusteeship.

Q So this had nothing to do with the success or failure of his mission, did it?

A Nothing whatsoever.

Q And it had nothing to do with any further service after Mr. Charles Wilson said "I accept", did it?

A I did not render any further service.

Q You did not --

A I did not have to render any service after he accepted.

Q And so was this clear in your mind at that time?

A Yes, it was clear that I didn't have to render any further service.

Q Was it clear that you were to get the five percent, of, I think you said this morning the avails of the recovery in the United States?

A Yes, of the Interhandel recovery, of this specific property.

Q Yes, this was not fuzzy in your mind -- this was as clear as anything, was it not?

A Yes, indeed.

430

Q Without any qualifications?

A Yes, indeed.

Q And I think I correctly summarize your testimony when you said that your conversations with Dr. Schaefer about the five percent or in which the five percent was mentioned, were at least three in number, is that correct?

A Well, it was October the 26th --

Q 1959?

A At Paris, 1959 -- and times in between we also discussed it.

Q I think you said before you discussed the five percent.

A Yes.

431 Q On any one of those three occasions?

A That's right.

Q Did anybody else in Interhandel promise you the five percent?

A No.

Q And was the first conversation with Dr. Schaefer about the five percent in October of 1959?

A It was on October the 26th.

Q And it was as clear to you in its definition, in its scope, as it was on the other two occasions?

A It was clear to me on October the 26th when Dr. Schaefer offered me five percent and I accepted my commission on the basis, on the understanding, that my five percent would not be paid to me unless and until there was the recovery and it was to come out of the recovery in the United States.

Q And it was to be by performing your services or your services were to be performed, rather, at the moment that you prevailed upon Charles Wilson to accept the trusteeship and he notified Interhandel to that effect, is that correct?

A Well, I don't know whether he notified them or not.

Q No. I say, when he notified Interhandel to that effect, I don't think the latter part is important.

A Well, I don't understand the question.

Q My question is: You were to have earned the five percent, your services were to be accomplished and completed,

432 when Mr. Wilson accepted the trusteeship?

A Yes.

Q And that was as clear on October the 26th, 1959 as it was in Paris at the end of April of 1960, is that correct?

A Well, I will put it this way: It was more clear at Paris because the mechanics by which it was to be actually effectuated were under the specific power that was then ratified.

Q But in between your one conversation with Dr. Schaefer, or more than one, it was clear then that you were both talking about the same kind of agreement, is that not so, sir?

A Our agreement, I think, followed that I would get the five percent out of the avails; during the months that intervened, that it took to achieve this trusteeship, the mechanics by which Interhandel would make it possible to satisfy all of the equities in the United States under the trusteeship, including mine, had to be established, and it was during the eight or nine days prior to Paris that I was directed by Dr. Schaefer to draw up these resolutions and options and powers in trust -- that was actually directed by Dr. Schaefer, and worked out so that he, when he met at Paris, would tell the trustee that the trustee could exercise these powers and pay the 20 or more million dollars out of the avails to satisfy all claims of all agents, which would include me.

Q So that there was, if there was any uncertainty

433 before Paris, there was no uncertainty after Paris, was there, in your mind about this agreement?

A There was no uncertainty after Paris about that in my mind, no.

Q And you had in effect, what you considered to be, an enforceable deal with Dr. Schaefer in Paris, is that not so, sir?

A Well, I didn't like to use the word "deal". I had a lien to be paid out of a settlement that may have taken ten years before it was paid, but when the monies would come into the hands of the trustee I had the right to step forward and have my five percent.

Q And whether you called it an agreement or a deal or not, it was well defined in your mind, is that not so, sir?

A Yes, sir.

Q Now, the Paris meeting occurred at the end of April, 1959, did it not, sir?

A No, it occurred at the end of April, 1960.

Q I am sorry, 1960 -- thank you.

During that time and after that time, you had considerable correspondence with Dr. Sturzenegger, didn't you?

A You mean for 20 or 30 years?

Q No, within the last, let's say, year or two, say a couple of years before 1960 and a couple of years after 1960.

A I didn't communicate with Dr. Sturzenegger during

434 the period of my activities for the Union Bank when he was no longer involved with Interhandel at all.

Q You didn't communicate with Dr. Sturzenegger after Mr. Wilson assumed the trusteeship?

A Oh, yes.

Q Oh --

A There had been a prohibition imposed upon me and it also remained, that no person should know the intimate aspects of the trusteeship arrangement which was under his sole power to exercise.

Q But the point is that you had correspondence with Dr. Sturzenegger after April of 1960, is that not correct?

A That's correct.

Q And before April of 1960?

A Not while I was working on this in confidence --

Q Well I said before 1960.

A Well, since I was a boy, yes.

Q Yes.

\* \* \*

BY MR. WILSON:

Q Mr. Schmitz, I show you Defendant's Exhibit No. 1 for identification, which is a longhand letter of three pages dated July 13, 1960.

Would you tell me whether this is in your handwriting,  
435 whether you wrote it and mailed that letter to Dr. Sturzenegger?

A Yes, it is a letter of mine to Dr. Sturzenegger.

Q Would you take a look at the second paragraph and would you read it out loud, please, sir?

A Yes.

"As you perhaps know by now, Dr. Hugo Frye called both the trustee and myself during his recent stay in New York, just prior to his return to Switzerland. I asked him to report to you as to the substance of our talk together as it was possible for me to lunch with him the day he left. Dr. Frye is a meticulous gentleman who most certainly means well. He appeared, however, inordinately concerned about my personal welfare and affairs and seemed worried that, whereas had this matter effectuated in 1958 and 1959 I would have been assured good treatment, on the other hand perhaps Dr. Schaefer and Union Bank would be otherwise. I told him although I have no" --

Q I told him that --

A "I told him that although I have no deal, I was not primarily concerned with this at the moment, but that there was a job to be done independently by an independent trustee for the good of all around to end this sad case properly. Enough said here."

436 Q Thank you.

THE COURT: Are you offering that, Mr. Wilson?

MR. WILSON: Yes, Your Honor.

THE COURT: Is there any objection to the letter?

MR. O'DONOGHUE: No, Your Honor.

THE COURT: Then it will be received.

\* \* \*

BY MR. WILSON:

Q Now, Mr. Schmitz, you have a second count in your complaint for \$112 thousand, is that correct?

A No, I do not. I have no such second count.

Q You mean you have withdrawn it?

A We have withdrawn it.

Q You have withdrawn it?

A Yes, sir.

Q Why did you withdraw it?

A I withdrew it because --

MR. O'DONOGHUE: Objection, Your Honor. I don't think that is relevant if it does not exist.

MR. WILSON: Of course it is relevant.

THE COURT: I think it is relevant and I will overrule the objection.

437 THE WITNESS: I withdrew it because it involves a demand by myself which I made after Interhandel violated the trust powers at a point in time that I had completed extensive supplemental interim services solicited of me by the trustee



and by Interhandel, at a point in time when I, as a family man, had to send a supplemental bill, as it had been understood I would, for those later supplemental services and these were services which I would have given to Interhandel for free if I had been financially able to do so at the time; but my basic duty was to help the recovery of the premises with the trustee to earn my five percent commission out of it.

I felt that I was entitled to the balance due me for those special supplemental services. I felt in the perspective of time, over the years, now that I am here, that it seems to be a matter which is rather trivia in the light of my overall contributions and my overall basic commission, to secure the acceptance by Mr. Charles Wilson of the trusteeship that the Swiss desired.

Q Mr. Schmitz, when you filed this lawsuit of yours in 1967, you had that count in the complaint, did you not, sir?

A This was -- you mean the complaint in this action?

Q Yes, in 1967.

A Yes.

Q Now those considerations which have caused you to withdraw this claim are considerations which occurred after 1967, is that not correct?

438 A Not particularly, no.

Q Well, why did you decide to do this on the eve of trial?

A I decided to do it on the eve of trial because my counsel and I discussed it and I took the advice of my counsel not to do it, not to pursue it.

Q Well, what was the advice of your counsel?

A That I, well, just that I can withdraw any claim. I have a right to the two counts, I can withdraw it.

Q Did you then consider that you didn't have a claim for \$112 thousand?

A Oh, definitely -- I didn't say I wouldn't have a right to the \$112 thousand.

Q But you have now surrendered it -- you have now just surrendered that claim, have you not?

A Well, I always had a right to it --

Q No, I'm not asking you that. In your own mind -- you are not a lawyer, are you?

A No, indeed.

Q But in your own mind as a layman you have surrendered that claim of \$112 thousand, have you not?

A Just as I would have -- sure. Yes.

Q Answer me yes.

A Yes, yes, sure -- absolutely.

Q And this \$112 thousand is simply the result of

439 taking 19 by \$2,000, that is, \$38 thousand, from a claim of \$150 thousand for your services, is it not, sir?

A For my --

Q For the services rendered under the second count of your complaint?

A Well, that is what it would be, if I follow the mathematics, yes, sir.

Q All right. And is it not true that that claim for this so-called interim service ended according to your complaint on December 31, 1961?

A The special interim services were ceased to be paid at the end of 1961.

Q No, I didn't ask if they ceased to be paid. Was that the date beyond which you made no further claim for interim services?

A Yes, that doesn't stop me from making it.

\*\*\*

Q All right. You made a claim for interim services for a period which extended from June 1960 to the end of  
440 December 1961, did you not?

A Yes, a balance, for a balance.

Q But you didn't -- you made no claim for interim services after December the 31st of 1961, did you?

A Well, my interim services were terminated.

Q All right. You were asked about services this morning which you rendered in the year 1962.

You are making no claim for those?

A I have made no claim for them, no.

Q And there is no claim before His Honor today for those services, then, is there?

A No, there is not.

Q And you spoke about Dr. Schaefer not paying you for some expenses covered by bills, bills which you rendered.

Is it not true that now you have been paid all of those expenses?

A I have not been paid all of my expenses, no, I haven't.

Q Well, is it your testimony that you have not been paid those expenses?

A We have not, no.

Q Did you ever render a bill for them?

A I sent a bill for services that were denied me.

Q In what amount, sir?

A Oh, this was a few hundred dollars, sir.

Q Well, is this the expenses that Dr. Wehrli eventually  
441 saw that you were paid?

A As I recall there was one, no, not as I recall. At the very end of 1961 Dr. Schaefer would not pay me some balance for expenses.

Q You didn't collect it in a lawsuit, did you?

A No, sir.

Q But you say that those bills were less than \$1,000, is that correct?

A Well, if I added up all my expenses it was a great deal more.

Q No, you have never rendered a bill for a great deal more?

A No.

Q And the bill you rendered for expenses that you say Dr. Schaefer never paid, was that for a sum less than \$1,000?

A Well, I would say so, offhand, now -- yes.

Q You rendered a bill soon after the trusteeship was accepted or about the same time, perhaps, for your services up to that date, of some \$13,363, didn't you?

A No, I did not. I recall that bill -- I rendered it at the special solicitation of Dr. Schaefer prior to the acceptance of the trusteeship.

Q All right -- in April or --

A In April, yes.

Q All right. And what period of time was covered by  
442 the expenses for which that bill was rendered?

A Well, I think perhaps eight or nine or ten months; something like that.

Q Did that cover a period of time prior to the time that you first saw Dr. Schaefer in October of 1959?

A No, it didn't, not according to the statement.

Q Then it couldn't have been eight or nine months, it couldn't have been more than five months, could it, or six

months?

A Well, the voucher will say for how many months it was, but I don't have it before me.

Q Well, was it for expenses incurred October 26, 1959 --

A Well I would have to look at the actual voucher I sent.

\* \* \*

BY MR. WILSON:

Q In your Exhibit No. 50, you have a bill attached to it which indicates that the charges are from approximately the 1st of October 1959, check that and see if it is correct --

A It states "Expenses and disbursements incurred during  
443 seven months from approximately October 1, 1959 to May 1, 1960."

Q Yes. Now, Mr. Schmitz, in preparation for this trial, did you know that considerable correspondence was gotten from Mr. Spofford by you or your counsel?

A I understand that a file was sent from Mr. Spofford's office.

Q And did you read that file before the trial?

A I have not been over the whole file.

Q You haven't read every single one of the letters that represented the correspondence of Mr. Spofford?

A Oh, I have looked at some of the files, yes.

Q Well, is it not true that you have read every letter that was in the file?

A I certainly didn't go through them all -- I have not, no. That is certainly not true..

Q Well, why didn't you?

A Why should I?

Q Well, why didn't you read the correspondence?

A I was working with my attorneys and I looked over a lot of letters of Mr. Spofford but I wouldn't say all of the correspondence. I wouldn't even know it was all of his correspondence.

\* \* \*

444

BY MR. WILSON:

Q Well, when did you get that file, Mr. Schmitz?

A When did I get it, or my counsel?

Q Or your counsel.

A Well, they would have to answer that. I don't know.

Q When did it first come to your attention, or when was your attention first called to the fact, that they had the file?

A Well, I would think it was several years ago; but perhaps --

Q About two years ago?

A Well, I assume so -- this particular action, this action was instituted in 1967.

Q Is that the explanation for when they got the Spofford file?

A Well, I don't know when we got the Spofford file.

Q All right. Did Mr. Spofford tell you whether or not he had any forewarning of the date of Mr. Schaefer's appointment with the Attorney General in October of 1961?

A He knew that Dr. Schaefer was coming, he told me.

Q Did he know the date?

A I don't know if he knew the date.

445

Q Did he tell you whether he had any correspondence with Mr. Schaefer, Dr. Schaefer, over the visit and wanted to know what he could do to contribute to it?

\* \* \*

THE WITNESS: No, he did not.

BY MR. WILSON:

Q Did the trustee tell you that Mr. Spofford had had correspondence with Dr. Schaefer and that Mr. Spofford had asked whether there was anything that he could do to contribute to the visit?

A No, he did not.

Q Did you sit in on a meeting with Mr. Wilson, and Mr. Spofford, and/or Mr. Sam Pryor, at which I attended?

A No.

446 Q Were you ever invited by those gentlemen to attend a meeting at which I was present?

A Yes.

Q Did you decline to come?



A No.

Q Why didn't you come?

A I testified earlier that I was late.

Q You are talking about the first meeting.

A Yes.

Q You did speak to Mr. Wilson's secretary about your presence and she brought a note into the room, didn't she?

A I was late.

Q I say: Did you ask her to deliver a note to Mr. Wilson that you were there in the building, you did, did you not?

A I, I can't recall. I may have.

Q Well, you weren't invited to that meeting, were you?

A I wasn't told to stay out, either.

Q Why didn't you come in?

A Why should I?

Q Is that the answer that you want to give me?

A Well, I was late and I stayed out in the office. I don't understand.

Q I see. Did Mr. Spofford tell you that there were enumerable meetings between me and him upon the subject?

A Yes, he told me.

447 Q Did he tell you that his relations with me were satisfactory?

A Yes.

Q Did the trustee tell you that there were a number of meetings that I had, at which he was present?

A I don't recall that.

Q No meetings at all, sir?

A I didn't say no meetings at all. I am talking about when you were there, when you came up to New York.

Q More than one meeting, sir?

A Yes, you were at the meeting with Dallas Townsend.

Q All right. How about other meetings in New York -- with the trustee. Did he tell you that I was there?

A No.

Q You have no information that I was with the trustee at New York other than at one meeting, sir?

A That is my -- that is, all I recall, yes.

Q Now in all your conferences with Mr. Wilson he never imparted to you each time he met with me?

A No.

Q Did he ever tell you that I always came to New York to see him and that he never came to Washington to see me?

A He didn't say anything about you.

Q No. All right. You say he never said anything about me --

448 A Well --

Q Was he critical of me?

A Well, I know one thing he said of you. You called

up on the telephone while I was in his office once and you knew he was to be trustee and you would like to have a meeting, the 3rd or the 4th or the 5th, and he said you asked whether he, he the trustee, would still need your services and he said something to the effect that he thought your efforts were sterling and that he wouldn't want to do anything to not back you up.

Q Did he show you a copy of the letter to the Swiss saying that he was highly satisfied with my cooperation?

A No, he didn't show it to me.

Q Did you know that such a letter was written?

A No.

Q Did you have access to the trustee's correspondence in this case, with Mr. Schaefer or with anybody else, sir?

A While Mr. Charles Wilson was trustee, he only told me what he chose to tell me.

Q No, I didn't ask you that. I asked you, sir, whether you had access to his correspondence?

A No, sir.

Q Did he ever show you any single letter which he had received from anybody or had written to anybody upon the subject of the Interhandel case?

449 A. I don't recall he did.

Q Your testimony is that you never read any single

letter, copy or original, that was dispatched to or sent by Mr. Wilson to anybody in relation to the Interhandel case?

A Oh, that's not my testimony. I have seen letters that he sent to people, such as Interhandel; but I wouldn't be able to recall them. But I didn't have access to his file.

Q But you did see letters which he wrote?

A Yes.

Q And you saw letters which were written to him?

A Well, now -- to answer that question, I would have to see if I could remember one.

Q Try to remember one.

A Oh, yes, I have seen letters that were written to him.

Q Both ways?

A Yes.

Q Did you ever see one in which my name was mentioned?

A I can't recall.

Q You mentioned this morning something about the name of Mr. Clark Clifford. Could you tell me again in what posture you mentioned that name this morning, sir?

A Yes, I will, Mr. Wilson: The trustee told me that when Mr. Spofford told him that he wanted to withdraw as trustee's counsel, that he said that he had talked with  
450 Mr. Clark Clifford about representing him as counsel and that he had talked with Mr. Clark Clifford on other matters relating

to the duties of trustee.

Q The trustee told you that?

A Yes, sir.

Q Now, you and your then counsel, Mr. Nugent, met Dr. Edmund Wehrli at a meeting in Mr. Nugent's office in New York on Madison Avenue, in the summer of 1960, did you not?

A No.

Q No, was it --

A Well --

Q There was only one meeting, wasn't there?

A Yes, there was only one meeting, all right.

Q Did you refer to Mr. Clark Clifford in that conversation?

A In that conversation, you were sort of --

Q Now, just a moment. My question is: Did you refer to Mr. Clark Clifford in that conversation?

A I mentioned his name during the course of that conversation.

Q And in what posture did you mention his name?

451 A Oh, let me see. I think you were pretty angry and you were demanding some answers of me and I didn't want to tell you that I didn't feel I ought to tell you then and I said that, you asked me for some names and you were pretty angry, and I said: "Well, maybe it was Clark Clifford."

Q And you sent the trustee a memorandum of the minutes

of that meeting, of what transpired at that meeting, did you not?

A Yes.

Q You did?

A I sure did.

Q And you know that the trustee wrote me and said "The reference that Mr. Schmitz made to Clark Clifford in that meeting was erroneous", didn't you?

A That's correct, I went right down to his office following the meeting and told him what had happened and he said, "Well", he said, "Clark Clifford was not the man as to that particular instance."

Q Thank you. Now, speaking of the Nugent law office, Mr. Schmitz, you were referring yesterday to "my" office at the Nugent law firm.

Did you have an office there, sir?

A No --

Q You didn't?

A Yes, well, I had a desk there. That is where I had, you know, where I was coming and going all the time.

Q Did you have a name on the door?

A Oh, no.

Q And you didn't have your name on the board downstairs?

A Pardon me?

Q Nor on the board downstairs?

A Oh, no, no.

Q How are you presently employed, sir?

A Presently I am employed litigating a suit.

Q Thank you. And with respect to the patent that you worked on for so many months, have you licensed that patent, sir?

A No, I haven't.

Q Have you been carrying on negotiations with the Proctor and Gamble Company for the last five or seven years?

A No.

Q Have you been carrying on any negotiations with other soap companies for a considerable length of time?

A No.

Q Has any soap company or any company taken a license out on that patent?

A I wouldn't give them one.

Q Nobody has taken out a license on that patent?

A No.

Q Thank you.. Well, sir, how have you been employed since your other counsel filed a motion to intervene in the action, the Interhandel action, in this Court which we will say was 1965?

A Well, I do electrical work and I am working in some other matters, on some other inventions of my own.

453 Q Oh, you do electrical work; for a charge?

A I do it for myself.

Q For yourself -- from 1946 to the filing of this suit, whenever you were engaged by anybody, were you engaged by someone in relation to trying to effectuate an acquisition of the General Aniline & Film Corporation?

A Oh, no.

Q Well, what kinds of services did you perform for which, if you will forgive the use of the word, and I don't mean it derisively, for hire --

A Why should you?

Q -- from 1946 until you filed this lawsuit?

A Well, 1946, I became senior research and development engineer with Remington Rand in South Norwalk and I was in charge of new products developments and planning for the company and I brought Univac, the Univac computer, into the company.

Q You invented the Univac computer?

A I didn't say that.

Q Oh.

A I said I was in charge of new products research, the new products business for that company.

Q Well, now, Univac was a product of Remington Rand, was it not?

A No, it was not.

Q It wasn't?

A No, it was the product of Eckert Mauchley.



Q Well, are you suggesting that you acquired, for Remington Rand, you acquired the rights for Remington Rand to use Univac?

A My job, as I stated just now, was in charge of research for new products, research development for the company.

\* \* \*

455

BY MR. WILSON:

Q What did you do with respect to Univac at Remington Rand?

A Well, I, as I say, my duties were to develop for the president of the company and for the senior vice president in charge of technical planning, Mr. A. M. Ross, who was my boss, all new items for a five-year or ten-year period ahead, for the company and my duties in the company were to get the then Bowdoin wire which was then in its horse and buggy days, we had to go and find ways to get information retrieval and storage, intelligence storage techniques, magnetic spot sensor techniques, and the information at that time on independent retrieval methods was increasing and I had to know all of the plans of the company in order to survey the facilities to compare it with the IBM work so that it would be possible to secure competitive situations. You know, Remington Rand was in the dumps at that time compared to IBM. So Univac was only one small aspect of my duties with respect to the technical planning at Remington Rand.

Q Well, do I quote your answer correctly when you said: "I brought Univac into Remington Rand"?

A I say I was in charge of new products research and I was with Mr. J. H. Rand and I was actually offered the general managership of the Univac division before I quit him.

The Univac negotiations had been completed with  
456 Eckert Mauchley and that was my job.

Q Is it a fair statement to make: "I brought Univac into Remington Rand"?

A No I am not saying --

Q Now, just a moment. Would you answer the question?

A No, it is not fair to say I did everything, no.

Q No.

A But it was my job to initiate it.

Q What year did you go with Remington Rand?

A 1946.

Q And when you went to Europe in 1946, Mr. Nemzek was over there and you saw him, didn't you?

A Yes, I did.

Q And it was during that period of time that some effort was made and something was done to get the so-called option between Interhandel and Remington Rand for the General Aniline stock, is that not correct?

A Yes, Rand was attempting that.

Q You were there at that time, sir?

A Yes, sir.

Q Did you help to draw that option?

A No.

Q Were you privy to the conferences regarding the option?

A Yes.

457 Q What other representatives of Remington Rand were in Europe in the fall of 1946 when you were there? and Mr. Nemzek was there?

A There was a fellow by the name of Conrad Barthe from Paris who was in and out.

Q And he is a lawyer or was in Paris, was he not?

A Yes.

Q And that Barthe was there just talking?

A I met him.

Q Did you see him when I was in Switzerland in the fall of 1946?

A I don't remember.

Q Do you remember Mr. Nemzek telling you that he dealt with me?

A Yes and the Swiss wanted to get rid of Nemzek.

Q I know, but, when you were there did Nemzek tell you that I was there?

A You mean Nemzek telling me that you were there?

Q Yes, that's right.

A No.

Q I thought you just said that he told you I was in Switzerland.

A No, I did not.

Q Well, did he?

A No, he didn't.

458 Q Did you know that I was in Switzerland in 1946?

A I wouldn't recall that.

Q How long did you stay in Switzerland with respect to this acquisition of General Aniline by Remington Rand?

A Oh, I made repeated trips there.

Q When you say "repeated trips," how frequently -- I don't mean by date but over what period of time or years?

A Well, I was there, I was over there in 1946 for basically another purpose and I was there in 1947 several times -- I would say five times.

Q And there came a time when you recall there was a disagreement between Remington Rand and the Interhandel people, was there not?

A Yes, there was.

Q And when do you fix that time, sir?

A I fix that time -- really getting nasty about the end of 1949 or 1950.

Q And were you continuing to commute in Remington Rand's interest back and forth to Switzerland up to that time?

A Yes.

Q Were you giving a substantial amount of your time to the question which was important to Mr. James Rand, trying to acquire the General Aniline & Film Corporation?

A Yes.

Q And I believe you said when you heard that there was  
459 a claim of a valid option, that you broke off with Remington Rand?

A Immediately.

Q Was this before suit was filed -- the intervening of Remington Rand in the main suit?

A It was right after Frank MacNamara told me he was going to do it.

Q Was the principal part of your service, when you began to commute to Switzerland, was the principal part of your service for Remington Rand in relation to the General Aniline affair from then to when you quit?

A When I first went over not so much. At each successive trip, more so.

Q Yes. So that actually as you got deeper into it you were almost entirely consumed in your services with the General Aniline problem, weren't you?

A It became more so, yes.

Q Thank you.

Now when you left Remington Rand, where did you next

go, sir?

A When I left Remington Rand, I knew Dr. Sturzenegger who ran Interhandel --

Q No, I mean where did you go to be employed?

A I was a stockholder in Interhandel and I undertook to pursue the problem. I agreed upon the problem in earlier  
460 years, namely, to recover this property for Interhandel with all my efforts and all my resources.

Q Are you saying that from the time you resigned from Remington Rand that you began to be employed by Interhandel?

A Not at all.

Q Well, my question is: By whom were you next employed?

A I was employed by myself. I was a wealthy man.

Q Now, Mr. Schmitz, I'm sorry if I must probe you on that.

A I don't mind.

Q Because I don't mean to. But you had an independent income in your own right, sir?

A Yes, sir.

Q Enough to keep you and your family?

A Well, we, we were all right. I had, I had stock in Interhandel, I had stock in Remington Rand, I had a home and I had insurance. I had enough to give me the courage to feel I could dissipate some of it.

Q Well, would you tell His Honor what dividend you

received from your stock in Interhandel from the time of Pearl Harbor until the settlement with the United States?

A They never paid any dividends.

Q Not one single nickel dividend, did they?

A That's right.

Q Thank you. Are you still a wealthy man?

462

A No, sir.

Q Now, you didn't answer my question. My question was answered simply: "I am a wealthy man." By whom were you next employed after you left Remington Rand?

\* \* \*

A I was next employed by the W. R. Grace Company.

Q Did you attempt to negotiate with Mr. Floyd Odlom of the Atlas Company?

A I didn't attempt to negotiate.

Q Did he approach you to negotiate?

A No.

Q Did you ever have any discussions with Mr. Odlom at any time? in October 1950 and going through until April 1951 with respect to Mr. Odlom or the Atlas Company acquiring General Aniline?

A Oh, sure -- yes.

Q Did you exchange letters with him as to how you would get compensated?

A Oh, I just -- yes.

Q Did you ever get compensated?

462 A No.

Q Did you have any agreement with Mr. Odum for compensation?

A No, sir.

Q Was that because you could not come to any agreement?

A We couldn't come to any agreement as to how to proceed.

Q Did you make any agreement as to how you were to be compensated?

A No, sir.

Q Did you ever have any draft of a written discussion as to how you would be compensated?

A Oh, let me think -- maybe I would have to refresh my recollection.

Q Well, you answered my previous question as to where you were next employed by saying you were next employed by the Grace Company.

A Yes.

Q Was there in between a relationship with the Shields Company?

A Oh, yes. I had forgotten that -- yes.

Q What was the nature of the employment with the Shields Company? And over what period of time?



A Well, I think that was in 1952 or 1953; and -- would  
you please give me the question again. I didn't fully  
463 understand it.

(Whereupon, the previous question was read to the  
witness by the Reporter.)

THE WITNESS: Now, as to the nature of the employment,  
I was employed as their special representative to advise them  
on how to proceed to contact Interhandel towards a purchase of  
all of Interhandel's vested shares from General Aniline Film  
Corporation.

BY MR. WILSON:

Q At that time did you consummate such an arrangement  
with the Shields Company?

A Yes, I did.

Q So that you were the agent of the Shields Company  
or the agent of Interhandel?

A I was the agent of the Shields Company.

Q And over what period of time did that arrangement  
last?

A It lasted until 1953.

Q And what were the terms of compensation which you  
were to receive?

A That is set forth in the letters.

Q Well, do you remember what they were?

A Roughly, at a basis of about 34 million, 30 to 34

million, purchase price, it was \$900 thousand -- the equivalent of about three percent of the recovery.

464 Q. Was this for introducing Mr. Shields to Interhandel, or was it to help effectuate that purchase?

A At that time -- oh, I wouldn't ask to be paid for introducing anybody. It was for doing what was set forth in the agreements.

Q In other words, there was a contingency with the Shields Company which was if you could procure for the Shields Company the control of the General Aniline stock, you would be so compensated, was this it?

A It is, if I could do what was set forth in the agreements and get for the Shields Company what they wanted, which was to guide their asking or designating the desired stock which was the subject matter stock in the General Aniline Corporation.

Q Which at that time you say somebody else said was worth something around \$40 million, is that correct, sir?

A Well, the assumed negotiating level of purchase would be around \$34 million or \$33 million, in there.

Q And your percentage of recovery would be -- whatever it was -- would come as the result of Shields being able to buy this stock, is that correct, sir?

A Well --

Q It was keyed to that?

----- A It was keyed to the value of the stock which was \$900 thousand keyed to the value of the stock at about \$30  
465 million and it was, it would be with respect to their acquiring of it.

Q The acquiring of the stock?

A Yes.

Q And you were paid a monthly payment of some type, were you not?

A Yes, yes.

Q Do you remember what that was?

A Oh, I don't recall. The agreement called for \$45 thousand a year.

Q And were you paid by the Shields Company for that whole period?

A I beg your pardon?

Q Were you paid by the Shields Company for the whole period?

A No.

Q Did they terminate it, sir?

A They terminated it.

Q Did they terminate it under pleasant circumstances?

A Oh, I never had anything but pleasant arrangements with them. They were very nice people.

Q Why did they terminate it, sir?

A They terminated it because they had been promised by

467 a Mr. Germann that we would be the people who would be first to negotiate after the settlement of the Rand litigation and some steel mill business and Paul was very cantankerous and you will remember that you came into the office, John, with Walter Germann -- pardon me, I don't want to call you John --

Q Oh, I am delighted to have you do that. Why don't I call you Bob.

\* \* \*

with a man and you came into Mr. Paul Shields' office with Mr. Walter Germann and I was present after you were successful --

Q Now I am wondering if you have missed my question. All I asked you was why you weren't paid compensation for the time when you were active?

A Because according to Shields, Corney Shields was rather cynical about the whole Interhandel people and MacRae Sykes wanted to talk to him about the situation and he actually called, well I recall Mr. Paul Shields who was the senior partner, decided that really Mac and I should go to Switzerland and deal with Sturzenegger himself --

Q Well who was it that decided to cut off the monthly payments to you?

A I don't recall that. My whole difficulty on payments was Paul Shields.

Q Not Corney Shields?

A No, he had very little to do with it. He would just

468 sit around meetings and say nothing.

Q All right. And then you went with Grace, is that right, sir?

A Yes, that's right.

Q Am I correct that Mr. Al Wenzel introduced you to Mr. Charles Wilson?

A Yes. You are correct.

Q And was this in 1962 or 1963?

A 1953, in August.

Q I mean '53.

A Yes.

Q And Mr. Wenzel was an electrical contractor, wasn't he?

A He was comptroller of an electrical contracting company.

Q And that was at Long Island, if I remember correctly?

A No, the company is domiciled in New York City, but it has offices and does business throughout the country.

Q Were you present at any meeting with Mr. Walter Germann and I that we had with Mr. Al Wenzel, Mr. Charles Wilson about that period of time?

A Not I. Well, I don't recall. You were at a meeting with Mr. Charles Wilson and Walter Germann and Al Wenzel, you say?

Q Yes, with me.

469

A And you?

Q Yes. Down on Hanover Square.

A I don't recall.

Q That you were present?

A Not with you and Walter Germann and Al Wenzel.

Q Were you ever present when I was present with Mr. Charles Wilson at a meeting at Hanover Square touching on the subject matter of General Aniline?

A Not that I was there.

Q Were you engaged by the Grace Company in relation to the subject of the General Aniline stock?

A Yes.

Q And were you there for several years?

A I was with them until Mr. Wilson left in 1956.

Q Did you have a dispute with the Grace people?

A My dispute was with Mr. Peter Grace on the matter of his offer of \$40 million when I thought it should be more because I said it should have been \$55 million and Interhandel was entitled to that because that is what I was authorized to negotiate.

Q Did you ever write to Dr. Sturzenegger that you weren't going to let Mr. Peter Grace cheat you?

A Peter Grace?

Q Could you answer my question?

A I beg your pardon?

470 Q Could you answer my question?

A I can't answer it. I would have to refresh my recollection.

Q All right, sir. Do you remember ever saying to anybody that you were not going to let Peter Grace cheat you?

A I would be surprised if I used that term.

Q All right.

A But I may have.

[Defendant's Exhibit No. 2 was  
marked for identification.]

BY MR. WILSON:

Q Mr. Schmitz, I show you a xerox copy of a handwritten letter two pages long dated July 5, 1956 addressed to "Dear friend" and may I ask you this: Is this your handwriting and did you sign it and was it addressed to Dr. Sturzenegger?

A My hand, I signed it and it is addressed to "Dear Friend".

Q And you know that that is Dr. Sturzenegger?

A Well, he was a dear friend.

Q Yes, but that is who it was addressed to, wasn't it?

A Well, let me read the letter thoroughly. I just glanced at it.

Q Go ahead and read it and read the second page and see if you can see the word "cheated" on it?

A Where, where, Mr. Wilson? To save time, where do

471 you mean?

Q The first paragraph, the first two lines at the top of the second page. Do you see anything about cheated there?

A May I -- shall I read this to myself?

Q Well, let's do it this way. Have you established that you wrote that letter to Dr. Sturzenegger?

A Yes.

Q All right. Would you read aloud that paragraph in which the word "cheat" appears?

A "I am not afraid of Ferguson or Peter Grace and I am confident they will never succeed in cheating Mr. Wenzel or I out of our just due nor in compromising relationships within or with Basle."

Q Thank you.

A Basle meaning Sturzenegger.

Q All right.

THE COURT: Mr. Wilson, what do you want done with that?

MR. WILSON: I offer it, Your Honor.

\* \* \*

472

THE COURT: It will be received in evidence.

\* \* \*

MR. O'DONOGHUE: Your Honor, if I could interrupt for just a moment. Mr. Wilson has agreed that we may offer  
A.  
this affidavit of Detrich/Schmitz as Exhibit No. 131 of the Plaintiff.



THE COURT: Is that your agreement?

MR. WILSON: Yes, sir.

THE COURT: Without objection, Plaintiff's Exhibit 131 is received in evidence.

[Plaintiff's Exhibit No. 131 was received in evidence.]

BY MR. WILSON:

Q Now, Mr. Schmitz, after you left Grace, did you have some discussions with a Mr. Martino of National Lead?

A In 1958 I did.

Q Was there some occupation on your part, and again  
473 if I could use the word for hire, and I don't mean that  
derisively --

THE COURT: Couldn't you say, "for compensation"?

MR. WILSON: Well, if that alleviates it in Your Honor's opinion, I think it does too -- I will try to use that.

BY MR. WILSON:

Q Was there some occupation for compensation that occurred after Grace, immediately after Grace?

A Immediately after Grace?

Q Yes.

A No.

Q Was there any up to the time that you had discussions with Mr. Martino of National Lead?

A No -- well, I said no -- I mean I don't know whether I talked to General Dynamics before or after Martino. They were both the same year.

Q Well, you didn't have any engagement with General Dynamics, did you?

A No, I did not.

Q Did you talk with a Mr. Frank Pace?

A Oh, yes, yes.

Q And were your conversations as to General Dynamics' desiring to acquire General Aniline?

A Yes.

Q And you talked to a Mr. Alvord or so, did you not?

474

A No, I never did, I don't recall.

Q You heard that I did, didn't you?

A I didn't know you had, no.

Q You didn't?

A No.

Q Had the General Dynamics matter advanced to the point where you were discussing the terms of possible compensation for services?

A Oh, yes.

Q And was that broken off because you couldn't agree or because you just didn't care to go any further with them?

A No, we had agreed, Mr. Frank Pace asked me to his

home in Greenwich after we had had some talks, with a man by the name of Mr. Johnston who was an executive of the company and Mr. Pace is a member of my church and I know him as an usher --

Q Yes?

A I had some talks with Mr. Pace and Mr. Charles Wilson and Mr. Johnston and Mr. Pace asked me to his home one night in Greenwich and I spent about an hour or two with him together and he said, "Bob," he said, "I feel that it would be very important for General Dynamics to be able to get Aniline because we have nothing but defense business and we are getting this way an industrial business which would give us this cushion in case there was a retrenchment, which would be good" 475 and he said he would offer me the same type of arrangement that I would have had with the Grace Company with a big option on this stock plus cash if I would do it.

I said to Mr. Pace at that time that I would take it on provided I was satisfied as to their conduct, and so on, that they had to keep their hands off the government, that they had to keep their hands off the Swiss and they had to be able to be free to do business on the basis that they rendered assistance under the guidelines of Basle, meaning Sturzenegger at that time because I didn't want it to be another Rand situation.

Q And this never worked out, is that it?

A Well, Mr. John Nugent and Mr. Pace and I and one of their lawyers, a fellow who lived, some lawyer of theirs who lived down at Byron, we had a meeting with Mr. Charles E. Wilson in the Grace board room on Park Avenue, and this lawyer had all kinds of rambunctious ideas and we just all threw up our hands and left it cold.

Q Now this has reminded me of two things that I wanted to ask you about and one is that I wanted to ask you about the participation of Mr. Charles E. Wilson in this General Dynamics affair and the other is going further but, let us go back and ask about this first. But what was the nature of your financial arrangement with Grace?

476 A My direct financial relationship, my only direct financial relationship with Grace, and I had indirect financial relationships, but my direct financial arrangement with Grace is as expressed in the exhibits in this Court.

Q Did you say that there was something else besides a direct arrangement?

A Oh, yes, definitely.

Q Were you paid a monthly stipend?

A Yes.

Q And did you have a contingency on the successful acquisition by Grace of the General Aniline stock?

A I had two contingencies. I had a participation of ten percent in the stock and I had a cash payment on the

order of \$175 thousand so that I would have some cash.

Q And these contingencies were related to the successful acquisition by you in behalf of Grace of the General Aniline stock; right?

A Yes, sir.

Q And that had nothing to do with securing an introduction of Mr. Peter Grace to Basle or Zurich or anything like that?

A No, sir.

Q Just a moment --

A No, I was a sharer in the transaction. I participated as part of the transaction. I had a share.

477 Q But it was keyed to the success in getting these shares?

A Well --

Q Right?

A Well, I had to exercise my call option by buying shares.

Q I understand that. But it was all keyed to your being instrumental in getting the shares?

A I think -- in that particular deal, yes.

Q Yes. What were you concerned about where you had to use the word "cheat" with regard to you and Mr. Wenzel?

A Well I can answer that question in the Grace deal. I can answer that.

Q Thank you.

A I had a very confidential relationship, very close personal friendly relationship with Dr. Sturzenegger --

Q Yes.

A -- ever since I was 12 years old, and from 1946 on, as the years went on, I got closer to him.

Q Yes.

A Now, when it came to the Grace matter, Dr. Sturzenegger was embarrassed by the advent or the coming to his office from Germany of a man named Ferguson.

478 Mr. Wenzel and I had a 15 percent call option at Grace's price on any share of Interhandel, bought from Interhandel, and naturally I had spent a lot of my time and money in trying to guide that stock for the Swiss. Peter Grace had accused me between 1953 and 1956, that I had stuck to the \$55 million price which I felt was due to Interhandel in lieu of the \$40 thousand cash that Mr. Tony Corcoran had suggested he offer because I wanted to line my own pockets and Al Wenzel and I said: "If Peter Grace said that in our presence, we would throw him out the window" because, after all, we were paying the same price for our stock as he was paying for his and why should I pay 15 percent with Al Wenzel of the \$55 million figure? I was doing what I thought was right.

So Peter Grace and I after 1953 didn't get along very well but Mr. Charles E. Wilson was chairman of the board

of directors and Wilson participated and wanted to swing Peter Grace up to the \$70 thousand price which I had recommended later.

Q Did Peter Grace --

A Well, let me finish. So Peter Grace sent this man Ferguson to see Sturzenegger and take him this proposal and negotiates some deal while I was still involved in this situation so naturally I wrote Sturzenegger whom I always felt was a prince and I wrote him, "Dear Friend", but I wouldn't let him cheat Al Wenzel and me because we had our right to buy our shares.

Q I see --

A I mean this is the type of thing Interhandel was  
479 always victim to people trying to do this sort of thing -- everybody and his uncle.

Q I appreciate your explaining that.

Now I would like to come back to the question for a moment and would you just answer my question? I was asking about Mr. Charles Wilson's participation in the talks with General Dynamics; but before going to that, I remember the next thing I wanted to ask you about and that was about the history of your relationship with Dr. Sturzenegger.

Let's go back and develop a little history at this point for His Honor. Your uncle was Dr. Albert Gadow, was he not?

A Yes, sir.

Q Who is now dead, I believe.

A He died a year or so ago.

Q And Dr. Gadow married your father's sister?

A My father's sister, yes, sir.

Q And he came to Switzerland from Germany about what, 1928 or 1929?

A No, he came in 1930.

Q 1930?

A 1930 or 1931.

Q And at that time Sturzenegger Bank, a private bank, was known as the Gruetert Bank, was it not?

A Sturzenegger was the successor in interest, yes.

480

Q And Gruetert was the general partner of the private bank, was he not?

A Yes, he was.

Q And Dr. Sturzenegger was a young man and graduated from law school and was smart enough not to practice law but went into the banking business, didn't he?

A Dr. Sturzenegger came into Gruetert Bank originally as an attorney, right.

Q And he eventually became a limited partner and then general partner and then the successor, did he not?

A These details I couldn't say, except that he --

Q You don't know this part of the history, sir?



A Well, I know that he came in originally as a lawyer and when Gruetert died he succeeded to the bank.

Q Almost at the same time that your uncle, Dr. Gadow, came over from Germany and lived in Switzerland, isn't that right, where he lived until he died, as I recall?

A Right.

Q And almost about the same time Interhandel then known as I. G. Chemie was formed, was it not?

A No, it was formed in 1928.

Q Well, it was approximately at that time?

A Well, three years earlier.

Q And the important Swiss at that time in I. G. Chemie was Mr. Gruetert, was he not?

481 A Well, the formation of Chemie in 1928 was through a consortium of four banks with Gruetert.

Q Yes, but Gruetert was the important Swiss in that, right?

A Gruetert originally was not Swiss. He came over from Frankfurt.

Q But didn't you know he was a Swiss who immigrated to Germany and worked over there?

A Well, I knew he was working in Frankfurt with Metall Gesellschaft but --

Q You don't know that he was not a Swiss native but that instead he came from Germany, he was German?

A Well, it didn't mean too much in my mind.

Q All right. You didn't know that.

And I. G. Chemie was formed by your other uncle,  
the brother of your father, Herman Schmitz?

A Yes.

Q Right?

A Yes.

Q Who was head of the I. G. Farben Industrie?

A Yes.

Q Isn't that right?

A Well, he was head of the finance department.

Q The great chemical industry of Germany and he became  
president of I. G. Chemie?

482

A He was the first president.

Q As your other uncle, Dr. Albert Gadow, did he not  
go on the board at that time?

A On the board?

Q Or was he only there as general manager?

A Well, you see, later Walter Germann came on the  
board --

Q No. I will come to that later. He came on the  
board in 1945, but let's go back. I know that, but I am  
talking about your uncle, Albert Gadow, who was general manager  
of I. G. Chemie about 1930, in the 30's?

A He was general manager in the 30's until after the

war.

Q Yes. In all, about 23 years?

A Yes, sure.

Q And he and Dr. Sturzenegger were partners?

A Yes, and friends.

Q Right. And I just wanted to develop that because there came a time when Dr. Gadow or rather when Mr. Gruetert died, do you remember this?

A Yes.

Q And at that time, actually it was six days after war broke out in Europe, in September of 1939, was it not?

A I remember a story about his dying but I don't know if it was six days after war broke out.

483

Q But anyway, Dr. Sturzenegger succeeded to the ownership of the bank and the name was changed, isn't that true?

A War broke out in 1938.

Q No, no, this was the invasion of Czechoslovakia in 1938, if that is what you mean. I am talking about the conflagration in Europe itself which occurred on September 14, 1939. Don't you remember that?

A I don't remember that.

Q Well, the point is it was 1939, but my point is do you remember that Dr. Sturzenegger became successor to the ownership of the Gruetert Bank?

A Oh, that I remember, yes.

Q And do you remember that the Gruetert Bank was, shall I call it, the apex or the central figure then of a complex?

A Well, I know of the consortium and the reasons they formed I. G. Chemie.

484 Gruetert complex?

A I know what Dr. Sturzenegger as head of it has told me over a period of time.

Q All right, well, what did he tell you about Rigidor?

A I have heard the name.

Q What else?

A I have heard of Huguenin. I have heard --

Q You are not suggesting --

A I have heard of Perpetua.

Q You are not suggesting that you know Huguenin was part of the complex, are you?

A No, I said there are all kinds of these names floating around.

Q Well, you said something about Perpetua. Was Perpetua part of this complex?

A Of the original consortium in 1928.

Q No, no -- you can start in 1928 if you want to, I don't care, but what did Perpetua have to do with it?

A I don't know.

Q What was Rigidor's position in regard to this bank?

A I don't know.

Q Do you know of a name which sounds sonorously like Solidet(?)?

A No.

Q Which was "society" and so forth?

485

A No, no.

Q Did you ever see the cross options between these companies and Sturzenegger and company?

A No.

Q Do you have any idea what effect they had on the real ownership of Interhandel of shares in relation to the Sturzenegger Company?

A No.

Q Did you ever take the time to evaluate who, really, within this complex owned these shares?

A No.

whether

Q Do you know/there was a German taint in these shares?

A I know there was no taint. There was no such doctrine.

Q What?

A There was no doctrine of taint.

Q Well, you sent Dr. Sturzenegger a copy of the von Opel decision, the Uebersee-von Opel decision in the Supreme Court in 1948, did you not?

A That was a minority decision of Mr. Justice Jackson --

Q Are you saying you didn't send him that, sir?

A Did I send him what?

Q The Uebersee-von Opel decision.

A That was a minority case.

Q My question is: "Do you remember reading the  
426 Uebersee-von Opel decision?

A Oh, I remember talking it over with you for hours.

Q Did that not inject the concept of alien taint under the enemy property law of the United States?

A It was a minority opinion where Justice Jackson said that maybe there are statutory provisions for seizure that maybe "taint" would be sufficient to justify seizure but there was no taint. Anyway, what is taint?

Q Did you ever hear the Department of Justice urge that their position in the Interhandel case was not whether it was controlled by Germans but whether there was taint by Germans?

A Sure, but that came later in the case though.

Q Was that not one of the controversial issues that had to be compromised in this case?

A Not necessarily.

Q No?

A Not necessarily.

Q Why not?

A Well, the sovereign government did not seize this tainted property.

Q Was the government not contending that Interhandel was tainted?

487 A The government -- I think the only residual thing in the black box was maybe they could establish there was such a doctrine of taint.

\* \* \*

BY MR. WILSON:

Q Do you remember as we got into the late 50's that you heard a lot about the government's contention that there was no longer any concern about whether or not, or where the control lay, but as to whether there was taint, German taint?

A : Because that was the only thing they could defend on.

Q But this is what they were arguing, was it not?

A Yes; but there is no suggestion --

Q Am I not right?

A There was no such taint.

Q I am asking you, if that is not what the government was arguing?

A : The lawyers were saying that, yes.

Q And you saw John Wolf?, didn't you?

A Yes.

Q Didn't he argue that with you?

Q Didn't you discuss it?

488

A No.

Q You went down there to complain of being double-crossed, didn't you?

A No, no, I did not.

Q But you agree with me that the main contention of the government over the Interhandel case as the years went on was this element of taint, was it not?

A I don't agree that there was ever such an element of taint.

Q I didn't ask you if you agreed. I would agree with you that there was not. But I am asking you if the government of the United States was not contending that there was?

A Oh, Dave Schwartz went up before a Senate committee contending that there was.

Q This was the main contention of the United States Government?

A That's correct.

Q And did you know that the government was contending three evidences of taint in the Interhandel case?

A I did not know what they would consider in evidence of taint, no.

Q Did you know of a transaction by a Swiss bank corporation in the war years transmitting escudos to Spain or to Portugal through Dr. Sturzenegger's bank for the purpose of purchasing tin for the Germans? Did you know that?



489

A No.

Q You didn't know that?

A No, I wouldn't know of that one, no.

Q Did you know that that was one of the things that the government said was taint in this case?

A No.

Q And did you know of a transaction whereby a man by the name of Fritz Brumm went to Holland during the war to look out for some Interhandel business in Holland because a man by the name of Boissevan had been locked up by the Germans?

A No.

Q Did you know that that was contended by the United States Government to be taint in this case?

A No.

Q Did you ever advise Mr. Spofford or Mr. Wilson that there existed contentions by the government with respect to these subject matters that were called enemy taint which had to be overcome in order to make settlement in this case?

A I advised --

Q Would you answer my question?

A That I specifically mentioned taint?

Q Yes.

A No. You mean to these specific matters of taint?

Q Yes.

A No.

490

Q Well, did you make any mention of any specific matters that were contended for by the government to be taint which had to be overcome in order to make settlement in this case?

A Oh, yes.

Q What?

A Well, the matter of alleged taint would encompass the matter of which individuals controlled Interhandel or whether Interhandel was operated during the war in a manner which established what they considered technically taint. In other words --

Q Well, I am just asking --

A Where is the delineation between control and taint?

Q This is my point, because what I am asking is whether you told him these had to be overcome in order to make a settlement?

A Well --

Q Did you tell Mr. Wilson that?

A What I told Mr. Wilson is what Dr. Schaefer told Mr. Wilson at Paris and that was that Mr. Wilson, if he took on the trusteeship, could have representations by Dr. Schaefer that all allegations of quote taint end quote were spurious, specious and absolutely invalid -- all of them, and Mr. Wilson stated to Dr. Schaefer in Paris that he wouldn't take on the trusteeship if there was any valid doctrine of taint and

491 Dr. Schaefer represented there was none -- to your client.

Q Well, now, I am glad he did that and it was right, and I praise Mr. Wilson for not accepting it under any other circumstances. But you knew and I knew that the United States Government was claiming taint, didn't you?

A Yes, that's correct.

Q I am asking you to give His Honor one single instance of taint that you were aware of that were discussed with the trustee or -- wait a minute now -- with Spofford, that had to be overcome to persuade our adversary to settle this case?

A But one instance of taint was my own uncle, who was the manager or the general manager of Interhandel during the war and he was a German citizen -- Rache was a German citizen, living in Switzerland; and if my own uncle by marriage was a German citizen, domiciled in Switzerland, and was managing the company during the war, that could be taint.

Q Mr. Schmitz --

A If taint exists.

Q Let's be specific about dates. Mr. Carl Rache died before the beginning of the war in Europe in January of 1939, don't you remember that, sir?

A Well, I have a medal as to his death at home on my dresser.

\* \* \*

492 Q Did you know your uncle, Herman Schmitz, in Germany was not re-elected to the board and presidency of I. G. Chemie

at the June meeting?

A My uncle, Herman Schmitz, was the president of I. G. Chemie until 1933, I think it was, and as of 1938, Interhandel severed its connection with Chemie and there was a dividend option contract and they paid gold --

Q Are you sure that you know what you are saying about these dates?

A Well, I am trying to answer your questions about my uncles being on the board.

Q You said that your uncle, there was a charge of taint against Interhandel because your uncle was German and he was on the board and was manager of the I. G. Chemie during the war years.

A My Uncle Albert.

Q You are talking about your Uncle Albert?

A Yes.

Q Oh, you are not talking about Herman?

A No, not Herman.

Q You do know that your Uncle Herman got off the board at the June 1940 joint meeting of the stockholders of Interhandel?

A I thought he had been off before that myself.

Q All right.

Now you spoke of the severance of the relationship between I. G. Chemie and Farben. That occurred in 1948, did you say?

A No, I didn't say that.

Q Was it 1938?

A Well, now, the Washington Accord had that -- I don't recall when the date was; but the thing was the Government of the United States thought that the dividend option contract was the control agreement and it was not.

Q Do you know when that was changed, sir?

A Well, I can only recall what I was told by my uncle, my Uncle Albert and Dr. Sturzenegger and they were impressing upon me the validity --

Q No, never mind that. We are talking about dates.

A Yes.

Q When was it changed?

A 1939, I think.

Q Right after the war was declared in Europe, was it not?

A I don't know if it was after or before the war.

Q And the right, the option and right of Farben to buy shares was changed to a right of first refusal, wasn't it?

A I was told the relationship was severed.

Q You don't know that it was a right of first refusal?

494

A No.

Q You never told Mr. Charles Wilson about a right of first refusal?

A No.

Q And you never told Mr. Spofford about it?

A No.

Q And you don't know what were the circumstances of the conversion from option to right of first refusal?

A No.

Q When was Mr. Charles Wilson interested in the General Dynamics transaction?

A He wasn't interested in that.

Q Well, why did he go to see Mr. Pace about it?

A Well, he went with me to see Pace. I couldn't give you all the reasons, personally.

Q He was still with Grace, wasn't he?

A Oh, gosh, no.

Q He had left Grace?

A He left May the 10th of 1956.

Q Okay. Now, why did you and Mr. Wilson collaborate on the General Dynamics?

A We didn't collaborate on General Dynamics at all.

Q Was he present at that same meeting with Mr. Pace, or at some meeting with him?

A Oh, yes, Mr. Charles Wilson had been asked by

495 President Eisenhower to take the presidency of the People To People Foundation and one of the purposes of this was to create

more understanding in the world, and to create better relationships between countries and it was not in any cynical way, it was an up-lifting idea, working towards peace in the world and towards improving the posture of our country in the eyes of other people.

When Mr. Wilson left the Grace Company, several months later, maybe in June of that year, a month or two after he left Grace, and became president of the People To People, I went to Mr. Wilson and asked him whether or not, confiscation of private property really, was it or was it not contrary to the concepts and objectives of the People To People idea and that actually the idea of confiscating private property, regardless of this question of taint, and all these things, and having in mind the particular purpose because after all, right is right, and would not Mr. Wilson use his efforts to persuade the government and the higher officials to understand the gravity of this and do all he could to help --

Q Well, now just a minute. I'm really not so interested in matters of a general nature. I just wanted to have you answer my question which was: What Mr. Wilson had to do with Mr. Pace on the General Dynamics thing; and if he discussed with General Dynamics this matter that you have described to us earlier? Now, what does that have to do with People To People?

496

A Well, the sovereign vested your client's property

and the sovereign of course also had the authority to divest it by executive order. It was an executive discretionary decision and the Chief Executive could order the Attorney General or the Attorney General could invest it or divest it and they could open up the drawer and take out a paper and draw up a stipulation --

Q No, the point is --

\* \* \*

THE WITNESS: Well, it was a preamble; but the answer is that it was a matter of principles involved, Mr. Wilson was interested in the principles involved and was wanting to see Mr. Pace about what he would do for the Interhandel case because he thought that the seizure was wrong.

BY MR. WILSON:

Q And you were interested in employment, is that not so?

497 A You mean -- no, I wasn't seeking employment. I was seeking, I had turned down, frankly, Pace's suggestion, because I was seeking the means to resolve the matter and not means for getting involved with the company that couldn't resolve the matter.

I was advising them how I felt it could be done.

Q You were advising General Dynamics how to do it, is that it?

A I was advising General Dynamics as to the justness,



of the idea that it has to be given back, if they had any of these big companies, it is people who work this world and if Mr. Pace even, even if General Dynamics didn't buy it, if I spent ten months with that man and he had something to say to the right man in Washington, it would go to the benefit of your client, if Dynamics was willing to put their shoulder to the wheel and help and do the right thing, then I would work for them; but if they would not, I wouldn't.

Q Did you at all discuss terms with him?

A Yes, certainly.

Q You did?

A I have testified to it.

Q And you couldn't come to terms of employment?

A We did.

Q Is this in writing?

A Mr. Pace made me his offer and we drew up and put it in an exhibit here.

Q What happened to that arrangement?

498 A Well, we didn't go through with it, because General Dynamics people felt that they could use their influence unilaterally with the government and go at it another way.

Q And did you make a red cent out of that deal?

A No, sir.

Q No, sir?

A No.

Q You didn't get any monetary compensation, any monthly stipend or anything under that transaction?

A Well, it speaks for itself. It --

Q What do you remember about it?

A Well, I remember that it was in there -- it should be in there and I would like to read it.

Q Did you have any percentage contingency on success?

A No. I had an option.

Q On success?

A An option to buy.

Q On success?

A Yes.

Q And you were to use your effort to help acquire this success, is that right?

A That's right.

Q And did you introduce Mr. Pace to anyone?

A No, he didn't need me to introduce him to anyone.

Q You didn't take him on a flying visit to Switzerland or anything?

A No.

Q And after this General Dynamics incident, was this followed by your dealings with industrialists in America who wished to acquire General Aniline, say, National Lead?

A Well, I have testified that I had some passing talks with Air Reduction but substantially, yes -- National Lead,

500.

A, Plus that.

Q Is that on this list here?

A I testified the other day that Mr. Martino and Mr. John Nugent and Mr. Charles Wilson and I were in a meeting after a series of meetings with Mr. Martino and we shook hands on the prenegotiated agreement and I asked Mr. Nugent, my attorney, to go to the office and draw up the agreement to proceed and I just testified that several days later a vice president by the name of Wildner came back to Zurich and notified Mr. Martino he thought he could go to Sturzenegger without me and I testified that I considered this bad judgment on the part of National Lead because they tried to do so and the door was slammed in their face.

Q And did you receive any compensation?

A Well, I just broke up. I wouldn't work with them after that.

Q Had the document been signed?

A The transaction was shook on.

Q What? What was shook? Can I have that back, Miss Reporter?

A We worked on the thing, the lawyer was asked to draw it up and we agreed formally and he shook my hand --

Q Oh, I see, thank you very much. I understand. You mean that there was a hand shaking over the terms but it was never executed, is that it, sir?

Mr. Martino wanted to see me and I saw him.

Q Mr. Jo Martino is president of National Lead or at that time was, is that true?

A Yes, to my knowledge, yes.

Q And you saw him?

A Yes.

Q Or was he chairman of the board?

A Chairman of the board.

Q And did you meet with him?

A Yes.

Q Did you come to some arrangement with him and did it involve the payment of a cash payment to you on a contingency basis?

A He offered me 50 percent option of all the shares of stock.

Q And did you get a monthly stipend or an annual stipend?

A Well, yes.

Q What is your best recollection as to that?

501 A No, it wasn't executed.

Q It was never carried out?

A No, sir.

Q And the National Lead people said in fact: "We can do this without you."

A Yes, "We can go to Sturzenegger without you."

Q Do I understand you to say that on occasion you had an engagement with a concern or two of them with some names like Food Machinery or something? This was Mr. Paul Davies outfit, is that right?

A Well, it was then called Food Machinery and Chemical Corporation in conjunction with Bell and Howell.

Q Yes. Well, when you say in conjunction with Bell and Howell, was it interrelated, an interrelated outfit held by Bell and Howell or a joint venture or what was Bell and Howell's interest in the situation?

A Well, the head of Bell and Howell, Mr. Percy, and Mr. Davies stated to me that they wanted to acquire the overall company and that Bell and Howell wanted to peel off the film end and Mr. Davies wanted the dye stuff and heavy chemical stuff.

Q And they were going to acquire jointly the whole --

A Well, they wanted to acquire jointly the stock of the company, vested.

Q Oh, a joint acquisition and then spin off these  
502 different divisions, is that it?

A That is what they wanted to do.

Q Bell and Howell taking the photographic end and Food Machinery taking the chemicals and dye stuffs?

A That is what they stated to me.

Q Is that it?

A Yes.

Q Were you employed by what would be the ultimate joint venture, that is to say, Bell and Howell-Food Machinery, or were you only employed by Mr. Davies, Paul Davies?

A Paul Davies and the chairman of the board; but actually I was asked to submit the views to Dr. Sturzenegger, to him, in a report and then I should go to Switzerland and find out what would be feasible.

Q Well, did you have a contract with him at that time?

A Well, he wrote out a letter of agreement and gave me \$5,000 to give him a report.

Q Was that all the money you ever received?

A I think so.

Q Were there any expenses besides this?

A Well, just the \$5,000.

Q What?

A He gave me \$5,000 so I would do this.

Q I see. And was there any provision in the agreement that you would get any compensation in addition?

503 A No.

Q Contingent compensation?

A No.

Q And when did you go to Switzerland on this venture?

A In early December of 1958.

Q You were the agent for Food Machinery on that trip,

were you, sir?

A I was not the agent of Food Machinery.

Q Well, in whose behalf were you traveling there?

A I was traveling there as a free agent to, with the obligation to make a report to Bell and Howell, but that didn't make me their agent.

Q You were not Interhandel's agent, were you?

A No, I was not.

Q Well, what --

A No, well, Dr. Sturzenegger -- well, I wasn't Interhandel's agent, I wouldn't say that.

Q Thank you.

Did you ever discuss Bell and Howell with Mr. Wilson?

A Yes.

Q And did Mr. Wilson volunteer to inquire of the government officials as to the possibility of this combination moving in and spinning off these sections of General Aniline?

A I don't know anything about that. I doubt it.

Q You were never told by Mr. Wilson whether or not he  
504 went to see the Attorney General about this transaction?

A No, I do know that he told me that he reported to the Attorney General about having no connection with any buyers. That he would only help in the matter of unvesting.

Q Mr. Schmitz, I show you your own Exhibit No. 17, which is a copy of the letter dated March 10, 1959 from

Dr. Frye to Mr. Wilson, Charles Wilson, with an change on that, which indicates that a copy went to you by some method, is that correct, sir?

A Yes, this is true.

Q Would you be kind enough to read aloud the first paragraph?

A "Dear Mr. Wilson:", Mr. Frye says in this letter --  
"Through our common friend I have received two letters dated March 4 and March 7 through which he informed me of your negotiations with Mr. Rogers. It seems that you have run into certain difficulties as an executive with corporate and personal interests, implicating in his meeting with Mr. Rogers that you were behind his case. You have apparently written to the Attorney General stating that you had absolutely no personal interest in the group represented by the executive in question."

Q Now, first of all, do you have any doubt about the allusion to you as the common friend there?

505 A Oh, no, they called me the common friend, yes.

Q And you stated yesterday, you identified the March 7th letter referred to here, but neither of us have a copy of the March 4th letter.

Could you tell me, and I am holding a copy of what you have, could you tell me when you informed him, and these



letters to Mr. Frye that I am referring to, Dr. Frye, can you tell me if you know what he alluded to when he said that "our common friend informed me"? Do you know what you would have informed him which would cause him to state it in that fashion?

A Well, I wouldn't know why Dr. Frye used the word "negotiations".

Q Were you aware of the fact that about this date that you wrote these letters of March 4th and March 7th, that Mr. Wilson had been in contact with the Attorney General Rogers on some subjects, sir?

A Oh, I would think he would have been there or with the Department of Justice at some time.

Q And do you know what the subject matter was, sir, or are you just speculating that he might have been there?

A Well, I can recall distinctly that Mr. Wilson was exercised about Mr. Percy having used his name with President Eisenhower without his knowledge or consent.

Q Did Mr. Wilson tell you that he went there to Mr. Rogers' office?

506

A No, he told me he wrote Mr. Rogers.

Q Do you know what is meant by Mr. Frye in that second sentence, "It seems that you have run into certain difficulties"-

A Well --

Q -- "as an executive with corporate and personal interests," and so on with the reference to the implication

in the meeting with Mr. Rogers about his being behind the case?

A Well, I wouldn't use the word "implicate". I probably didn't want to say -- what I probably did, I knew that this had been alleged by Mr. Percy from my information, that Mr. Percy has brought this up with President Eisenhower at the White House, and I would generally use the word "government officials or high government officials" and it may be that Frye gathered it might be Rogers, that Mr. Wilson was very embarrassed and exercised by the fact that his name was used in the White House, inferring that he favored Percy.

Q You don't remember mentioning the name "Mr. Rogers" in one of your two letters to Mr. Frye?

A I may have. I don't have them before me.

Q Well, he says here -- well, during this period of time of March 1959, were you still interested in the Food Machinery-Bell and Howell objectives?

A No.

Q When did you --

A Not whatsoever.

507

Q When did you cease to be so interested?

A Immediately upon my return from Switzerland in December 1958.

Q Do you know to what extent Mr. Charles was interested in that objective?

A I would say he was not interested in it whatsoever.

Q Do you know how his name got mixed up with Bell and Howell?

A Sure --

Q In relation to Mr. Rogers?

A Oh, I don't, I don't think there was any relationship there. I think it was in relationship to President Eisenhower.

Q What was that mixup?

A Well, I had had a luncheon with Mr. Percy at the Pinnacle Club in New York and I had a luncheon with Mr. Davies at the Pinnacle Club and Mr. Charles Wilson was present there.

Q Was that a luncheon at your table --

A That was in the summer of 1958.

Q All right, go ahead.

A This was prior to my going over to tell these people whether or not they had reason to pursue the direct approach. Mr. Davies had believed that this company was going to be sold on Wall Street and that the Swiss would lose the case and I said I didn't believe that they would. I believed that the Swiss would win their cause. I didn't know whether there was  
502 any basis for the idea that in --

Q Well, thank you, Mr. Schmitz; but I'm not really interested in what you said so much as what did Mr. Wilson say?

A At what point?

Q At the luncheon in the Pinnacle Club in New York in the summer of 1958.

A He said he had no interest whatsoever in this case.

Q Was it your luncheon?

A Well, I remember that I had met Mr. Davies and I recall the luncheon --

Q Were you the host?

A I was not the host, no.

Q Well, how did Mr. Wilson get to come to that luncheon?

A Well, he is a very old friend of Mr. Davies.

Q The question was: How did he come to go to the luncheon?

A He was a good friend of mine.

Q And what did Mr. Wilson say?

A Oh, my goodness, the luncheon went on for a good hour and I don't recall everything that was said.

Q Well, you recall everything that you want to recall in this case, sir.

A Well, I would say basically that it was in the same vein, that Mr. Wilson believed, ardently, in the idea, from his contacts in Washington, that the government would like to  
509 unvest this property.

Q The General Aniline matter was the main subject?

A Oh, yes.

\* \* \*

Defendant.

CIVIL ACTION 35-67

Friday, January 6, 1970

(Pages 510 - 652)

Defendant's Copy

MARIE S. TAYLOR  
Court Reporter  
Room 6812, U.S. Court House  
Washington, D. C.

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512 MR. O'DONOGHUE: May it please the Court, as you know, Mr. Schmitz is under cross-examination, but Mr. Orrick has come on from California to testify, and Mr. Wilson has agreed that he may be taken out of order and immediately this morning, if you consent.

THE COURT: Is he called for the plaintiff?

MR. O'DONOGHUE: Yes.

THE COURT: Do you have any objection?

MR. WILSON: Of course, I am very happy to cooperate.

THE COURT: Very well. You may proceed.

WILLIAM H. ORRICK, JR.

witness on behalf of the Plaintiff, was duly sworn, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. O'DONOGHUE:

Q State your name please.

A William H. Orrick, Jr.

Q You are a lawyer, are you not, Mr. Orrick?

A Yes, I am.

Q Where do you practice?

A In San Francisco, California.

Q At one time you were <sup>an Assistant</sup> State Attorney General in charge of the Civil Division, isn't that correct?

513

A That is correct.

Q What were the dates of your term of office, if you can remember?

A I was <sup>Assistant</sup> State Attorney General in charge of the Civil Division from January 1961 until June of 1962.

Q During that time were you given charge of the so-called Interhandel case?

A Yes, I was.

Q Can you tell us when and under what circumstances that litigation was turned over to you?

A Yes. Yes, toward the end of April in 1961 the Attorney General, Robert Kennedy, and the <sup>Deputy</sup> future Attorney General, Byron White, asked me if I would be able to handle the business of the Office of Alien Property in the Civil Division. They wished to merge that office into the Civil Division and hopefully liquidate the work that had been going on there since the Second World War.

The main item of business, then, in the Office of Alien Property was the so-called Interhandel case, and so it was. As a result of that directive from my superiors I became familiar with the case.

Q When did you first start looking into it?

A That was not long after that time -- toward the end of April, first of May of '61.

Q Did you have occasion to meet with a Mr. Charles

514 Spofford about that time?

A Yes, I did.

Q Do you remember when you first met with him?

A I first met with him on May 11th, if I recollect it correctly. I might say, since you asked me to testify, I have reviewed a list of appointments which my secretary kept in the Department at that time, and so I do have that date and one or two others in mind.

Mr. Spofford was in my office at the Office of Alien Property, which was in the old Federal Home Loan Bank Board Building.

Q Did he invite your -- invite or did you find you find in the file a power of attorney for Mr. Charles E. Wilson?

A I recall seeing the power of attorney running from Interhandel to Mr. Wilson. I don't know that he called it to my attention, but I recall the power of attorney very well.

Q You remember it very well. Do you remember generally the terms of it?

A Yes, it gave rather sweeping powers, as I recall, to Mr. Charles E. Wilson to deal with all matters having to do with the -- on behalf of Interhandel having to do with their claims to the stock which had been vested into the Custodian of Property, and it bore the words "and irrevocable power of attorney," as I recall, because that gave me some pause when I read it.



515 Q Did you see at about that time or later a memorandum prepared by the trustee and filed by Mr. Spofford?

A Memorandum dealing with what subject?

Q With the Interhandel problem -- I will show to you, Mr. Orrick, Plaintiff's Exhibit 105 and ask you if you have any recollection of that?

A I do recall receiving some documents from Mr. Spofford -- this is nine years ago and I couldn't testify with a certainty whether this was the particular document.

Q Yes.

A But I do recall receiving a document that described the background of the litigation.

Q Well, whatever documents were delivered, you examined, I presume?

A Yes, I did.

Q Did you ever meet Dr. Alfred Schaefer?

A Yes, I did.

Q When did you first meet him?

A It was again at that meeting on May 11, 1961, in the office that I occupied in the Federal Home Loan Bank Board Building.

Q Who was present, if you can recall?

A I believe Mr. Wilson was.

Q Was someone with Mr. Wilson?

A Yes, Mr. Schaefer, and Mr. Spofford and myself -- I am

516 not sure who else was there. Maybe Mr. Myron may have been there.

Q Was Mr. <sup>Dehmann</sup> Ulman there?

A He could have been, I don't recall it.

Q Going back just a moment, your predecessor in handling the alien property matters was a Mr. Dallas Townsend, I believe?

A That is correct.

Q Did he ever brief you about this case?

A No, he never did. I may have spoken with him informally once or twice about it, and I did see him after we came in, but we never discussed it at any length.

Q Now, returning to the meeting of May 11, I believe it was, will you tell us what occurred at that meeting?

A Yes, Dr. Schaefer was brought in by Mr. Spofford and Mr. Wilson, and I suppose at the instance probably of Mr. Andy Ulman, to meet me. I recall him pacing up and down in my office making uncomplimentary remarks about the United States Government, which irritated me very much, and I recall asking him to leave my office.

Q How long did that interview take?

A I would guess 20 minutes. I was really quite taken aback by his statements about our Government.

Q Now, thereafter did you have occasion to meet with Mr. Spofford again?

517

A Yes, I did.

Q On how many occasions and during what period?

A I met with Mr. Spofford on five occasions between that time and the end of August or early September.

MR. WILSON: Of the same year?

THE WITNESS: Of 1961, yes.

MR. O'DONOGHUE:

Q Do you remember what was discussed at these meetings?

A Yes. Mr. Spofford wished to inquire as to the method by which the Government was going to dispose of the litigation. As I indicated, I was new in the job, and I had as of the date when I took it over, the end of April or first of May, no familiarity with the litigation. The litigation was lengthy, it was complex, it had been pending 14 years at the time that I got there and only one deposition, as I recall, had been taken -- it had been to the Court of Appeals two or three times, to the Supreme Court twice, I believe.

It had been to the World Court -- and so I was -- it took a lot of doing to become familiar with the various ramifications. I was therefore unable to discuss it in any detail with Mr. Spofford on his first several visits other than to discuss it generally as one lawyer to another.

And I recall telling him that I felt that the way it should be handled is that it should be handled like any other lawsuit and we would work up a good trial testimony and get

518 it ready for trial and also get some other people familiar with it so we could see what the possibilities of settling it were.

Q Did you make any attempt to get anybody ready to discuss settlement of it?

A Yes. It concerned me a great deal as to the manner that we should follow and the methods we should follow, and I discussed it with people inside the Department and outside the Department, and eventually made an arrangement which turned out to be quite satisfactory with respect to settling it.

Q I see. Did you have occasion -- you saw Dr. Schaefer again, did you not?

A Yes, I did.

Q What was the next time you saw him?

A I am not exactly sure. I know that I saw -- I made a point of visiting Dr. Schaefer in his office in Zürich in December of 1961, around the 15th or 16th. I was over there on another matter and I thought I would go up and talk to him just generally about the case, and I think that was the next time I saw him. I saw him in all three or four times.

Q Do you remember his coming to your office any time between May 11 and your visit to Zürich in December of '61?

A May 11th up there -- I don't have it clearly. I do know he did come to my office on several occasions, but I am not sure of any date in between there.

Q Who accompanied him on those visits?

519           A     He usually came with Mr. Wilson. That was my recollection. I don't think he came with Mr. Spofford.

\* \* \*

          Q     Did Mr. John Wilson come to see you during the summer of 1961 on any occasions?

          A     Not to my recollection. Mr. John Wilson saw me a number of times like at least 11 after the summer of 1961 beginning in September or October.

          Q     Well, did you make any inquiry about his representation in light of the power of attorney to Charles Wilson?

          A     Yes, I did. When he came to see me, I said, as I recollect, "Mr. Wilson, I have seen this broad grant of power to Mr. Charles Wilson, and I have to know who was authorized to negotiate on behalf of the Swiss." And as far as I know, it was Mr. Charles Wilson.

          So we discussed that and later on I believe the power of attorney was revoked and a document bearing the title "Revocation of Power of Attorney" or some such thing was shown me and thereafter Mr. Spofford didn't come around and Mr. Wilson did,  
520 and we dealt with Mr. John Wilson.

          Q     Who showed you this?

          A     I believe Mr. John Wilson.

          Q     When Dr. Schaefer came to your office sometime after the first meeting, was any proposal made for settlement of the case by him or by Mr. John Wilson?

A Dr. Schaefer made a proposal, either in the late summer or early fall of 1961, the purport of which was that any monies derived from the sale of the shares should be contributed to European Development Bank, or some such thing.

We thought it was a ridiculous proposal and we didn't pay much attention to it.

Q When you saw Dr. Schaefer in Zürich in the winter of '61, was there any discussion with him at that time of the settlement?

A No. We just discussed the case in very general terms, as I recollect it. I don't recall we ---

Q By the way, this offer of settlement that was made involving putting funds in a special bank, whatever it was, was that in the form of a written document, do you remember?

A Yes, it was.

Q Was Mr. John Wilson present when that was presented?

A I don't recall.

Q After December of 1961, what is the next time you had occasion to meet with Dr. Schaefer?

521 A To the best of my recollection, I didn't meet with him again until we went to a meeting which I arranged in Munich for the purpose of discussing the settlement of this case. I think that was the next time.

Q When approximately was that?

A That was about April 9 of 1961.

Q Did that involve a series of meetings?

A That was a three-day -- two or three-day meeting.

MR. COURT: Did you mean '61?

THE WITNESS: I meant '62, thank you, Your Honor.

BY MR. O'DONOGHUE:

Q A series of meetings of three days?

A Yes.

Q Who attended those meetings?

A Mr. Prentice Hall, who was a businessman from San Francisco, and who the Attorney General appointed at my request, as a special agent, Dr. Schaefer, Mr. Wehrli, Mr. Saager, I believe, Mr. Brupbacher. I don't recollect who else.

Q Did you come to an agreement ---

MR. WILSON: Excuse me a moment, Mr. O'Donoghue.

Mr. Orrick doesn't know there are two Mr. Wehrlis in this case. Can we have it clarified which one?

THE WITNESS: My friend Mr. Wehrli, who is sitting at the table in the courtroom.

522

BY MR. O'DONOGHUE:

Q That is Dr. Edmund Wehrli, I believe?

A Yes.

Q Was an agreement on general terms reached for a settlement at that time?

A We brought back the bare bones of an agreement, which substantiated -- which was substantially what was finally agreed upon in the case. I always regarded that as an agreement in principle.

Q That was the agreement that was ultimately thrashed out and became the final settlement of the case, is that true?

A Yes.

Q After you came back from Munich, how much longer were you with the Department then?

A Until June, June 11th to be exact, 1962, and I then went to the Department of State.

Q Did you do anything significantly further about this case after you returned?

A Yes. I contacted, as I recall, Mr. John Wilson. We had a meeting. We employed outside counsel from the firm of Wilmer, Cutler and Pickering to assist us in the sale, and we began the process of, in your terms, thrashing out the agreement.

Q At any of the meetings that you had with Dr. Schaefer, did you also meet with Mr. Robert Kennedy?

A Yes. We met on at least one occasion with the



523 Attorney General.

Q Do you know how that meeting was arranged or who arranged it?

A I recall that I arranged the time and place, and that Dr. Schaefer had asked for the meeting, and that I believe he had asked for it through Prince Radziwill, who was the Attorney General's brother-in-law.

Q Was any discussion of settlement had with the Attorney General when you were present?

A No.

Q How long a meeting was that?

A Very short, just -- I would guess ten minutes. He never discussed settlement with Dr. Schaefer.

Q MR. O'DONOGHUE: I have no further questions of Mr. Orrick.

#### CROSS-EXAMINATION

BY MR. WILSON:

Q Let me see if he can fill in a few more dates. First, did Mr. Charles Wilson ever come to your office on this subject?

A I don't believe so. I know I did talk to him on the telephone on at least one occasion, but I don't recollect him coming to my office. He might have come once to introduce himself.

Q Was this a protracted telephone conversation or not?

524

A No.

Q Do you remember something about it?

A I really don't. It was in January of 1962, as I noted from my appointment book, but I don't recall what the occasion was.

Q Thank you. You said that your predecessor, Colonel Townsend, did not brief you to any extent about any of the APC matters?

A That is correct.

Q He had a deputy named Paul Myron, hadn't he?

A Yes, he did.

Q Paul Myron stayed on under the Republican Administration?

A Under the Democratic, yes, he did.

Q Did he brief you to some extent about the I. H. case?

A To some extent. There was a trial team at that time headed by Mr. Jaffe, who primarily briefed me on the case, and then I put other lawyers on it.

Q Did you see any minutes of a meeting held in Mr. Townsend's office at which Mr. Myron was present in December of 1960?

A I might have, Mr. Wilson. I can't state with certainty.

Q What did Mr. Myron brief you on, if he did, as to the status of any settlement negotiations when you came into

525 office?

A I don't recall. There was some talk about a 50-50 settlement, but that Mr. Townsend had that in mind, that's all I recall.

Q Mr. Myron is now dead?

A Yes.

Q And do you know whether Colonel Townsend is also dead?

A Yes, I do know that.

Q Can you fix the time of the meeting of Mr. Schaefer and you with the Attorney General?

A Yes. My appointment book showed it was on October 30 or 31, 1961.

Q Do you recall what communications there were to parties informing them of that proposed meeting?

A No, I don't. I think perhaps you and I discussed it on the telephone. I am not sure.

Q Do you recall that you telephoned Mr. Spofford and told him of the date and you telephoned me because you felt that we both were counsel of some sorts in the case?

A I think that is correct.

Q Did your diary help you to establish that that meeting with the Attorney General was on October 30th?

A Yes, sir, as I testified.

526

Q And would you recall in what manner the visits of Dr. Schaefer in that day or two progressed at the Department? That is to say, did you see him upon his arrival or as far as you know did he go directly to the Attorney General?

A I don't know. I just don't recollect that. I saw Dr. Schaefer on either the 30th or the 31st.

Q Yes, but did you?

A And I arranged the meeting in the Attorney General's office. I do recollect that.

Q But you do recollect, I think you said on direct examination -- you do recall that you were present briefly at the meeting of the Attorney General and Mr. Kennedy?

A And Mr. Schaefer.

Q Yes.

A Yes.

Q And I was not present at that meeting, was I?

A I thought that you were.

Q With the Attorney General?

A Yes, on October 30th.

Q Let me help you a bit. Was the present Justice Byron White of the Supreme Court -- he was Deputy Attorney General, was he not?

A Yes, he was.

Q Did he meet with Dr. Schaefer briefly, as you did, on that occasion?

527

A And, in the presence of the Attorney General?

Q Yes, or immediately afterwards?

A I just don't know, Mr. Wilson.

Q Was Dr. Schaefer directed by somebody in authority over you in the Department to deal with you in the settlement of it?

A Yes, by the Attorney General.

Q Do you remember that the next morning on the 31st, by arrangement, Dr. Schaefer and I came in to see you?

A Yes, I do.

Q Do you remember something about -- of course, the subject was I. H. and General Aniline, there would be no question about that?

A No question about that.

Q Do you remember whether we were getting down to serious talk or was this a kind of a general -- generalized meeting?

A My -- I have no recollection, Mr. Wilson. My guess would be it was a generalized meeting, to get acquainted under more friendly circumstances kind of thing.

Q Trying to patch up the May meeting, is that right?

A That is correct.

Q Did I seem to be trying to do that?

A I don't recall it with any ---

Q Do you think that was the second time you had seen me or had you seen me -- let me help you on that because there

528 is no use of your struggling with your memory.

I have a note that I saw you in your office on September 7, 1961.

A I think that is correct.

Q Here again we were talking in general terms, were we not?

A Yes, I don't recall any -- any details of our meeting.

Q Let me see. The litigation was still going on, was it not?

A It certainly was.

Q And by this time had not Mr. Jaffe -- the word is not "supplanted," because I don't mean he was, but had he been substituted by Mr. John Wolf?

A Yes.

Q And Mr. Wolf had garnered with your assistance quite a team of lawyers?

A That's right and he was in charge of the litigating part of it.

Q And all during this time from the time you came into office, the litigation was going on at high fever, wasn't it?

A We were doing our level best to prepare our case for trial.

Q We were having motions before the Special Master, do you remember that?

A Yes. I never attended any of the hearings, but I

529 do recall.

Q You do know that during all this conversational period the battle was going on?

A Oh, yes, we were trying to get the discovery of documents from Switzerland.

Q And I was the lawyer for the battle, wasn't I?

A You certainly were.

Q Because you had a recollection that I saw the Attorney General in 1961, let me see if I can clarify this point. Do you remember after the meeting in your office on the 31st attended by Dr. Schaefer and me -- which was not very long, was it?

A I don't recall that it was.

Q Do you remember that you said -- the Attorney General said he would be very glad to bid Dr. Schaefer goodbye if he would like to do it, do you remember that?

A Yes, I do.

Q Do you remember that three of us then went upstairs to the Attorney General's office?

A That's right.

Q We didn't even sit down. I am not suggesting any discourtesy. It was just a "How do you do" and goodbye meeting?

A That's right.

Q Do you remember the Attorney General in his dry humor turning to Dr. Schaefer and saying, "I am awfully glad to see

530 the Department of Justice Building is still here this morning."

A I think I do recall that, I believe.

Q And so he bid him goodby and that was the end of that episode of October, is that right, sir?

A Yes.

Q Mr. Spofford was not present, was he?

A Not at this second meeting.

Q But you have no doubt in your mind, have you, that you had notified Mr. Spofford of the forthcoming meeting?

A I phoned Mr. Spofford.

Q In advance of the meeting?

A Yes, and I think he was there at the first meeting. My recollection is that he was.

Q With the Attorney General?

A Yes.

Q In October?

A In October, I think he was. Well, I am not ---

Q I wasn't there so I can't tell.

THE COURT: That is the first one, October 30th?

MR. WILSON: Yes.

THE WITNESS: My recollection on it is not clear at all, but ---

BY MR. WILSON:

Q Do you remember and I think you testified to this on direct examination -- do you remember saying to me, in effect,



531 who is running this show, I have got a power of attorney and who is Schaefer and what is his status with the outstanding power of attorney, do you remember that?

A Yes.

MR. O'DONOGHUE: When was this?

THE WITNESS: This would have been at the September 7th meeting, which I think was the first meeting I had with Mr. Wilson, Mr. John Wilson, alone.

BY.MR. WILSON:

Q Do you remember on that occasion and on later occasions I asked you what progress Mr. Spofford was making with the negotiations?

A I don't recall that with any specificity. I would presume that the inquiry was made, because you then seemed to be representing the Interhandel group.

Q Let me ask you point blank what progress was Mr. Spofford making with his contact with you in negotiations?

A We had, Mr. Spofford and I -- as I say, on these five occasions on which we met -- discussed at some length various means of trying to reach a settlement. We discussed procedural questions. We did not discuss -- make any offers or counter-offers or engage in the kind of hard negotiation that took place, for example, with the Swiss at the Munich meeting, but we were talking primarily about the procedural difficulties.

532 Q Does this encompass all the meetings with Mr. Spofford?

A Yes.

Q That is a fair description of all the meetings with Mr. Spofford?

A Yes, I think it is.

Q Do you remember that we had about 2,000 intervenors around our <sup>AND</sup> ~~areas~~? (CIV'S!)

A I certainly do.

Q Did you know that that was a serious element to be dealt with somehow in the solution of this problem?

A It was always there. It was another mountain we had to climb.

Q Do you remember that there was a \$17.5 million tax claim pending against I.H. in a cross-claim in the counter-claim in the lawsuit?

A I do and with interest to be paid.

Q I wish you hadn't mentioned that anyway. That was a troublesome factor with me. This was an item that had to be somehow dealt with in the settlement.

A It was and was dealt with.

Q I assume you had to become somewhat acquainted with the merits of that dispute, too?

A Yes, indeed.

Q Do you remember what gave rise to that tax claim?

533

A No, I don't. I remember involving my colleague, Mr. Louis Oberdorfer, who was the Assistant Attorney General in charge of the Tax Division at that time, but I don't.---

Q You don't remember that was an outgrowth of a transaction between I.G. Farben and Standard Oil of New Jersey whereby the former sold to the latter the hydrogenation process for the extraction of gasoline from coal?

A Now that you mention it, I can recall it vaguely, but I really don't know anything independently about it.

Q Somehow I.H.; then known as I.G. Chemie, got engaged in the transaction?

A Yes.

Q And the tax bite from those transactions were imposed by the U. S. Government upon I.H., were they not?

A That is correct.

Q Not that it is too important, did you know that claim was never asserted until after <sup>we</sup> ~~you~~ filed <sup>the</sup> ~~that~~ suit, had you learned that?

A I did not know that.

Q Now, do you remember that the Attorney General had received, by way of dividends from General Aniline, upon the seized vested stock, a quantity of I.H. shares which were in the portfolio of General Aniline?

A Yes, I remember that.

Q Do you remember that was a very sizeable block of

534 stock?

A It was indeed.

Q There came a time we put a value by unanimous consent of \$6.5 million on those shares?

A Yes.

Q So that we had two serious counter-claims of \$17.5 million and \$6.5 million, or about \$24 million, as a setoff in the settlement, didn't we, sir?

A We did. I believe it was more than \$17 million on the tax with the interest on it, wasn't it?

Q But didn't I stop it at about \$17.5 million, or were you present that night? I don't think you were.

A No, but I recall we ended up with some \$23 million.

Q That was a product of the cost of the shares and the tax claim, it came to \$24 million in all. I think the tax claim had originally been around \$11 or \$12 million, penalties and interest building it up?

A Yes.

Q There were, in addition to these three major items -- there were interminable minor items that had to be thrashed out, weren't they?

A Yes.

Q As I remember, you were assigned a very excellent young lawyer named Murray Bring to sit in with us in those discussions, didn't you, sir?

535

A I did.

Q At any discussion with Mr. Spofford -- strike that for a moment.

Was there any other representative of Mr. Charles Wilson who appeared in your presence or who contacted you during this era than Mr. Spofford?

A My recollection is that it is only Mr. Spofford.

Q He had a young assistant who is now one of his partners, named Mr. Sam Pryor, Jr. Do you remember his being in touch with you at all?

A I don't recall that. Perhaps, maybe he was once or twice when Mr. Spofford was abroad or something like that, but my contact was primarily with Mr. Spofford.

Q Now, sir, hold on to your seat. Did you make an offer to Mr. Spofford to settle this case by giving Interhandel 75 percent of the proceeds of sale?

A No, I didn't.

Q Were you aware of whether any official accredited in the Department of Justice made any such offer?

A Nobody had any authority to make it. The case was under my jurisdiction.

Q To be conclusive about this, whether it be 75 percent of the stock to be returned or 75 percent of the proceeds of sale, were either of these either committed by the Department of Justice to be made to Interhandel?

536

A Never, to my knowledge.

Q And did I understand you to say, in effect, that you really never got down with Mr. Spofford to talking the nitty-gritty of what was coming out of this settlement in the way of money or stock?

A That is correct. We were concerned primarily with the procedure, how the stock would be -- the problems involved in registering the stock, the problems in valuing the company, the problems in proceeding with the litigation, all of course a necessary prologue to the hard negotiations. But while Mr. Spofford was in the picture, I wasn't familiar enough with the case to discuss the negotiations with him.

All I knew about were the difficulties ahead and I welcomed his suggestions about procedure. I found them helpful. He was an experienced lawyer. He was a fine human being, and he was helpful on the procedural matters. But we never discussed negotiations in the terms of percentages, or dollars, or how to dispose of any of the small matters. They weren't so small either, but ---

Q Let me put you on the spot. Can you say all those nice things about me?

A You and I always got along well, Mr. Wilson.

Q Thank you. In that single conversation that you may have had with Mr. Charles Wilson, did you make him any offer of settlement?

537

A No.

Q Was the subject of percentages mentioned with him?

A No.

Q My notes -- my diary shows that I saw you on November 15th and November 17th, 1961. Why I pestered you on two days, I don't know. But do you remember that I was in there about that time?

A I don't have it clearly in mind, Mr. Wilson. I do know that I have a record of some 13 or 15 telephone calls from you and 11 visits in that period, but I don't recall the exact dates.

Q Thank you.

A I will certainly accept your notes on it that you were in there.

Q I also saw you again on December 14th. Would this be before the Zürich visit or after the Zürich visit?

A This was before Zürich, wasn't it?

Q Do you remember I was there at that time?

A Yes, my appointment book shows that.

Q And we talked about your plan while you were in Europe to pass through Zürich?

A That's right, yes.

Q Now, the meeting in Munich in the spring of 1962, I think it is, was prearranged, wasn't it, sir?

A It was.

538 Q And do you remember by what communications the meeting was set up?

A I recall, so far as my part of it goes, that I selected Munich because the Civil Division had an office there, and provided a good meeting place, and of course selected the personnel from the United States to be there, and I talked to you about it and I think you arranged with Dr. Schaefer for the Swiss to be present.

MR. WILSON: Maybe His Honor would like to know if Mr. Prentice Hale, as you described a Special Assistant, but he is a well-known businessman on the West Coast?

THE WITNESS: Yes, he is president of the Broadway Hale Stores, which is a big retailing corporation in California.

BY MR. WILSON:

Q And a man whom you had confidence and whose advice was valuable in business matters?

A Yes, he is an experienced businessman and a director of the Union Oil Co., the Bank of America, and others and a first-class negotiator.

Q Do you remember how Mr. Brupbacher was identified to you at that meeting?

A No, I don't.

Q Is that the only occasion when you met Mr. Brupbacher?

A I think that was the only occasion.



539

Q Did you know who Mr. Saager was?

A He was, I believe, a director -- they were all directors of the bank. I recall Mr. Saager being an oarsman, if I am not mistaken.

Q Did I not state correctly that you said that in trying to encompass Mr. Spofford's visits to your office, there were five occasions between May 11 and the end of August of 1961?

A That is my recollection.

Q With the exception of your phoning Mr. Spofford in connection with the proposed meeting of Dr. Schaefer with the Attorney General at the end of October 1961, do you recall any other communications with Mr. Spofford?

A Well, we talked on the telephone and again from my appointment book, on at least seven occasions, and I think I might have phoned him on one or two of those occasions.

Q Were -- leaving out the one which fixed the date of the meeting, were these phonecalls along the same line as the face-to-face meetings? I mean, you were talking ---

A Well, they were sometimes to arrange an appointment. That was the general ---

Q But here again the subject matter of what I call the nitty-gritty of the money or percentages involved was never discussed?

A No, we did not discuss what I call "hard-core negotiations," because I wasn't in a position to do it. But again

540 Mr. Spofford was very helpful to me on developing the procedures.

Q But as far as offering 75 percent over the telephone is concerned, did that or did that not ever occur?

A That did not occur, believe me.

Q Did you ever offer me 75 percent?

A No, sir.

Q Mr. Orrick, I don't seem to have any knowledge of this proposal of Dr. Schaefer to contribute money to Europe under certain conditions. Can you be a little more specific? Was this for the displaced persons -- you mentioned a European bank. This wasn't going to be a gift to some private enterprise, was it?

A No. I don't recall the details of it. I believe that it contemplated establishing an independent bank called the European Development Bank, and the funds would be used for, I don't know, some of the lesser-developed countries. As I mentioned earlier, it was, I thought, a cock-eyed scheme and we gave it short shrift in the Department.

Q Be that as it may, cock-eyed or not cock-eyed, it was altruistic pro bono publico and not selfish or personal, is that right?

A I don't think so, Mr. Wilson.

Q When you say you don't think so, you think it was altruism?

A We couldn't quite -- quite candidly we didn't know how

541 the Swiss were going to get their money out of it, but we thought they were for sure.

Q Somehow?

A Yes, so I never characterized it as altruism or pro-bono publico or anything of the sort.

Q At least Dr. Schaefer didn't suggest the money was to be put in his bank, did he?

A We weren't even too sure about that.

Q You had met Dr. Edmund Wehrli, as you say, in Munich in April of 1962?

A Yes, sir.

Q Do you remember that there came a time when I brought him to your office in May of '62?

A Yes, I do.

Q Do you remember anything about that conversation? Was this again a sort of a friendly visit or did you get down to struggle with topics?

A Now I am not quite clear. I do recall that upon returning from Munich and upon discussing our so-called agreement in principle with the Attorney General and the Deputy Attorney General and having been encouraged to get the proposal in final form, that we did -- I did convene a meeting in May, in my office, and I think maybe Mr. Wehrli was present at that because we were talking, and you certainly were, and we were discussing how to put some flesh on this skeleton and get the

542 show on the road, so to speak.

Q Do you remember that the latter part of July there was a full-scale meeting in the Department of Justice attended by your representative Mr. Bring, Mr. Cutler's crew, Dr. Wehrli, myself and Mr. Erdley and some of his assistants, in which we began to hammer out the ingredients of a settlement?

A I recall hearing about such a meeting. By then I was on duty in the Department of State, so I had no personal knowledge of it and I am not sure -- well, perhaps -- Mr. Bring followed me to the Department and he was my special assistant when I was the Deputy Under Secretary for Administration, and I may have detailed him to go to a meeting, I don't recall.

Q You know that at the end, the negotiations went on between Mr. Katzenbach and myself, don't you?

A Yes, I recall hearing about that.

Q And you know the terms of the settlement?

MR. O'DONOGHUE: I object to this.

THE COURT: Yes, I will sustain the objection.

\* \* \*

543

BY MR. WILSON:

Q Are you generally familiar with the terms of the settlement?

A Generally, yes.

Q Did you recall seeing a printed pamphlet which con-

543      tained the definity of agreement between Mr. Kennedy and me on behalf of Interhandel?

A      I recall the consent decree that was printed -- the consent decree.

Q      Did you recommend a settlement in this case?

A      I did indeed.

Q      Was the settlement which was made similar to the one which you recommended?

A      Yes.

Q      Were you under any influence of -- under any influence to reach that determination?

A      Not at all.

Q      As far as you and I were concerned, was this a hard-core, horse-trading negotiation?

A      It was, indeed.

Q      And the fact that -- did you receive any instructions from the Attorney General or any of his deputies to -- by all means to make this settlement and to make it?

A      No.

Q      And to make it liberally?

544

A No, indeed, and there was a great deal of discussion within the Department as to whether any settlement should be made.

Q Did you regard this to be a liberal settlement in favor of Interhandel?

A No, I did not. I thought the United States frankly got the best of it.

Q Were you at all influenced by the fact that Prince Radziwill had somehow asked the Attorney General to see Mr. Schaefer?

A Not in the slightest. He had nothing at all to do with the settlement.

Q Did the Attorney General reply to you that on that account there ought to be some special treatment?

A He did not. He certainly did not.

MR. WILSON: Thank you, Mr. Orrick. Thank you for coming on for my part.

THE COURT: Mr. O'Donoghue, do you have any redirect?

MR. O'DONOGHUE: Yes, Your Honor.

#### REDIRECT EXAMINATION

BY MR. O'DONOGHUE:

Q In your discussions, Mr. Orrick, with Mr. Spofford, many of these various problems were recognized, were they not? The difficulties of settlement?

A Yes. We didn't talk at any length on any of these

545 individual problems. We talked generally about the difficulty in making an evaluation of the company. We discussed, I believe, the feasibility of settling it by a treaty, but we did not, to my recollection, discuss how we were going to get rid of 2,000 intervenors or what to do about the tax claim or anything else.

Frankly, because I didn't know enough about it to discuss it ---

Q They were recognized as problems in the situation at the time of discussions with Mr. Spofford, were they not?

A I am sure that I made mention of them, because the so-called "Green Committee" was coming around there, but he didn't know anything about it and I didn't know anything about it and we directed ourselves to the main point, which was developing a method by which we could feasibly consider settlement.

Q You said that Mr. John Wilson came to see you on September 7, 1961. Did you say that at that time you asked him who was running the show?

A Yes.

Q What did he tell you?

A I don't think he was very clear on it. I talked to him about the power of attorney and I said, "Before I can talk to you, we have got to get over this particular hurdle," and that, as I recall, was about what was said.

546

Q You don't know what -- did he do anything to satisfy you that the hurdle he gotten over?

A At a subsequent date, as I say, my recollection is that I received a document called "REvocation of Power of Attorney" duly executed and prepared pursuant to a resolution of the Board of Director of I. H., a copy was certified and so on. That is my recollection and that is probably in the files in the Department.

Q Do you remember when it was delivered approximately?

A No, I don't, Mr. O'Donoghue. I just don't. It surely was before April of 1962, and I would guess that it was sometime during the fall of '61, but that is only a guess.

Q Did you require it before carrying on negotiations with Mr. John Wilson?

A Yes, yes.

Q So it probably was delivered before you started this series of negotiations in the fall of 1961, would that be correct?

A There was no, as I recall, series of negotiations in the fall of '61.

Q I thought you said there were several telephone calls -- 13 or 15 telephone calls and 11 visits from Mr. ---

A I did say that.

Q When did they occur?

A Between August or September of '61 and June 11 of



547 1962 when I went to the State Department.

Q Not just in the fall -- and from September to June?

A No, most of them occurred, as I recollected, in the late winter and spring in 1962, though I do recall that Mr. Wilson could hardly wait to hear what happened between me and Mr. Schaefer when I was in Zürich in December, and there were quite a few calls at the end of '61.

Q Had you received that revocation of the power by that time?

A I don't recall. I am not sure we had.

Q You say you had a telephone call from Mr. Charles Wilson in January of '62?

A Yes.

Q Do you remember what was said at that time?

A No, I do not. I just don't.

Q Did he say whether or not he was still acting under the power of attorney?

A I just -- I don't recall that, Mr. O'Donoghue, and I wouldn't have recalled it at all had I not looked at my appointment book before coming.

Q You say that you thought that the United States got the best of the settlement?

A I thought so.

Q In your opinion would the Swiss have been entitled to more than they got?

548

A No.

Q You thought it was just generally fair both ways, is that it?

A Well, I thought the United States had a good chance to win the litigation and like in settling any lawsuit, we weighed the chances and the times and the consequences what the cost of settlement might be.

Q I see. So those were the considerations for a settlement?

A Those were.

MR. O'DONOGHUE: I have no further questions.

MR. WILSON: Just a question or two.

RECROSS-EXAMINATION

BY MR. WILSON:

\* \* \*

Q Do you remember whether or not when you saw this revocation of the power of attorney ---

A I don't.

Q --- that you were assured to your own satisfaction that you could deal with me?

A Yes, I recall that very clearly.

MR. WILSON: I see. Thank you very much.

\* \* \*

552

MR. WILSON: May I resume the cross-examination of Mr. Schmitz, Your Honor?

THE COURT: Yes. You may proceed.

CROSS-EXAMINATION

BY MR. WILSON:

Q Mr. Schmitz, on page 156 of the transcript, which is the day of the 6th, that would be Tuesday, in your direct examination and discussing with Dr. Schaefer the, as you say, the two and three percent mentioned by Dr. Sturtzenegger, and when you suggested the five percent, the following sentence appears:

"I said quote, the most generous fee in my opinion would be more than five percent, comma, but I said, in previous dealings over the years, I said, to Interhandel's knowledge I have gotten at least five percent."

Would you tell me what you meant by that? In what instances you got five percent in dealings with Interhandel?

A Yes. You asked me what I meant by that. I meant I had gotten arrangements which would provide me at least the equivalent of five percent out of the settlement avails, as

553 at least five percent of the transactions share.

Q In all of those cases, though, which you related to me yesterday, you said it was tied to your successful negotiation of the ultimate result of getting the General Analine stock for the principal?

A No. It was tied to the successful negotiation on the part of the corporation in question with your client, and the purchase by that corporation of stock.

Q I am not talking about my client; I am talking about people like Shields and people like Grace and everything else. You were to be a participant in the negotiations, weren't you, sir?

A Yes.

Q And the fee that you were to get was tied to the ultimate recovery or obtaining of the property, wasn't it?

A It was tied to the recovery of the property.

Q And in no case merely to the procuring of the services of anybody?

A At that point, no.

Q Mr. Schmitz, in the pre-October 1959 activities on your part, vis-a-vis, General Analine, with what principal were you collaborating when you were dealing with Dr. Frey and Mr. Charles Wilson?

A I was collaborating with Interhandel.

554

Q Did you regard Interhandel as your principal?

A No, not as my principal, but I regarded Dr. Sturtzenegger and Dr. Frye as being their principal.

Q You remember that you had received a letter from Dr. Sturtzenegger in September of 1958 in which he said he no longer had any influence in the picture because he was resigned from the Board?

A No, I received such a letter from him in which he said he no longer could control the destiny of the corporation.

Q All right, let's examine those letters.

MR. WILSON: Mrs. Harris, would you mark these two documents? The one of August with our next number, defendant's next number.

THE DEPUTY CLERK: Defendant's Exhibit Number 3 for identification is a letter dated August 25.

MR. WILSON: And one September with the next number, please.

THE DEPUTY CLERK: Defendant's Exhibit Number 4 for identification.

\* \* \*

BY MR. WILSON:

555

Q Mr. Schmitz, let us establish first that number 3 is a letter which you wrote to Dr. Sturtzenegger on the date of August 25th, 1958, and that number 4 is a copy of a letter, German text, with an English translation, which Dr. Sturtzenegger wrote you on September 22nd.

A This is a letter in my hand which I wrote to Dr. Sturtzenegger on August 25th, 1958, which is Defendant's Exhibit 3, and this in my hand here is marked Defendant's Exhibit Number 4 which looks like a photostatic copy of a German text of a letter to me with a transcription mark number 43 of a letter to Robert A. Schmitz in Greenwich signed "Your."

Q I can tell you this is one of the letters Dr. Sturtzenegger sent over you don't have any question about the authenticity of it, do you?

A I can look at it?

Q Of course you can.

A (Reading) Yes, I have that.

Q Are you able to read that Xerox copy of a handwritten letter? It's not a very good copy. Shall I try to get you a typewritten copy?

A No. No.

Q Would you dig through there and see some reference to vice presidents of previously interested purchasers?

556 A Could you sort of speed up things for me in order to give me an idea where I say this?

Q Fourth paragraph, first page -- would you read that aloud to His Honor?

A It's not too clear -- "a matter such as we have known of the greatest sensitivity must be handled faithfully and in utter high-level common purpose confidence. Only by those

people who can achieve necessary results and who have a complete understanding of the necessary criteria, American and Swiss."

MR. STRICKLER: On my copy that is the fifth paragraph the witness read.

BY MR. WILSON:

Q Try the fifth.

A "The A number one objective is to prudently --

MR. STRICKLER: If I may interrupt --

THE WITNESS: Please tell me what you want me to read.

MR. STRICKLER: It's the fourth little paragraph on mine here.

A one, two, three, four.

THE WITNESS: Okay, Mr. Strickler.

"As an example in the past, presidents of previously interested principals have not hesitated to lie, distort, and discredit and compromise you, your associates and myself."

557

BY MR. WILSON:

Q Is there something else there you would like to read and you are free to read any portion of it that you would like to read?

A What would you like to have me read?

Q Is there an allusion there to an agreement with National Lead?

A Where is that from?

MR. O'DONOGHUE: It seems to me the document speaks for itself if Mr. Wilson wants to ask any question on it.

BY MR. WILSON:

Q What is the allusion in the letter, what did you mean in the letter when you referred to your binding commitments with National Lead that appear in there? I wanted you to see the text before I asked the question.

\* \* \*

558

THE WITNESS: Okay.

"Now, two weeks ago, after some weeks of careful scrutiny here I entered into binding commitments here with National Lead. Now there is no great rush from my point of view, as haste makes waste. Yet it's very serious to contemplate the damage that can result from the unoriented and" ---

I beg the Court, I can't read the transcription. I can't see the word. Is there a typed transcription here?

MR. WILSON: Have we a typed transcription, Mr. Strickler?

MR. STRICKLER: Yes.

MR. WILSON: Let Mr. Schmits have it, please. Wait just a minute.



Mrs. Harris, would you mark this, if you please,  
Defendant's 3-A?

THE DEPUTY CLERK: Defendant's Exhibit Number 3-A,  
an English translation.

\* \* \*

BY MR. WILSON:

Q Mr. Schmitz, 3-A seems to be a transcription of your  
handwriting and I wish you would assure yourself that it is  
and rotate the same text on that please, will you?

559 A. Yes, sir. All right. I said, "Now there is no  
great rush from my point of view as haste makes waste. Yet  
it's very serious to contemplate the damage that can result  
from the unoriented and loosely instructed and nebulously  
motivated instructions of Martino's Mr. Wildner. What about  
his (Wildner's) coterie if any? God forbid."

This has a piece cut off here, too.

"Once this matter can be on solid foundation, and  
I know Wildner and perhaps Wildner knows the score, then  
he may have a role. However, as far as National Lead's  
being totally dependent on me and my associates Washing-  
ton assistants, Wildner is at the moment of little con-  
sequence but of great danger to the situation possibly."

Q Now do you find in this letter which is 3 and 3-A

that you asked Dr. Sturtzenegger to issue some letter vouching for your trustworthiness -- ?

\* \* \*

560 THE WITNESS: Oh. Yes, this is what you want, Mr. Wilson. It's -- and then I put, you know what you call it. "It's essential and very important. I wrote "very important" and afterwards I put "essential" and I put a little star and said "prime purpose of letter" -- Dr. Sturtzenegger, that you write a simple letter to me which might prevent distortion and achieve perspective but which is not in any way any business matter but a friendly personal appraisal from you. It could save time and preclude great trouble and confusion. I pledge to you, on my honor, that there never be shown to one man and will be properly used. It should read as follows, I recommend:

"Dear Bob." Now I am back in the rough. I can't read that.

"I wish to confirm that I and my associates have known you favorably and well for many years past and know you to be honest, trustworthy and capable in your business dealings. I personally have great confidence in you.

"With kindest personal regards."

"You might air mail special you this letter to me registered at Hunsinger Drive, Greenwich, U.S.A.

"As always my thoughts are with you. Very truly yours." Signed by Bob.

BY MR. WILSON:

Q I asked you a moment ago if number 4 which I am about to hand you, being a reply of Dr. Sturtzenegger to your letter number 3, reply being September 22, 1958, did he not tell you  
561 in that letter that he no longer had any influence with Interhandel?

\* \* \*

THE WITNESS: The letter says, and I will read the sentence, the paragraph, the specific paragraph:

"As you will know I resigned from the Board of Directors."

MR. WILSON: As you will know or well know?

THE WITNESS: "As you will know I resigned from the Board of Directors of Interhandel this year. Therefore I have no more influence on the destiny of the company, and the resolution of the G.A.F. problem being involved for many years. Needless to say that it's still my greatest wish to bring this tiresome matter soon to a solution favorable for the Swiss shareholders. But you will understand that the decision as to the steps to be taken is without exception for the Board of  
562 Directors to make, of which as I said before, I am no longer a member. As far as I know the Board has recently tried to put out feelers directly with the competent authorities for the possible solution of the case."

BY MR. WILSON:

562

Q Mr. Schmitz, before you got Dr. Sturtzenegger's letter of September 22, Defendant's Exhibit Number 4, did you know that he had resigned from the Board?

A Oh, yes.

Q Did you know that the preferred shares had been retired by that time?

A Oh, yes.

Q And did you know that his complex had been holding one hundred percent of the preferred shares?

A Oh, yes, for many years.

Q And did you know that the preferred shares voted equally with the common shares, that is, a vote for each share?

A Yes.

Q And did you know that these preferred shares were \$100 par with only 20 percent paid in?

A That I did not specifically know.

Q You did not know that the investment of the Sturtzenegger complex for those shares only cost them \$2 million on a \$10 million face value?

563

A. Specifically, no.

Q And did you know how many common shares were outstanding in the summer of 19 -- or the spring of 1958?

A Yes, there were roughly the hundred thousand. There were 52,000 half-pays which were dividend shares, had been held in the treasury of General Aniline which were paid out in dividends to General Aniline and Film shareholders in this case, the Alien Property Custodian, as holder of the vested shares, and 2,050,000 "B" shares and then there were 26,000 fully paid Interhandel shares, which had been Treasury stock in the treasury of General Aniline and Film Corporation also paid out as dividends which shares constituted a very large percentage of the outstanding shares of Interhandel. Then there were dividend shares paid to other American Aniline stockholders of Interhandel including myself, then there were shares in Switzerland of approximately 13,000 in number which were Dr. Sturtzenegger's participation, equity, in Interhandel, and then there were remaining percentages of Interhandel shares which were widely held in Switzerland. Some by the banks directly, very little by Swiss Bank Corporation, some by Credit Suisse, some by Union Bank, and I knew from speaking with Dr. Sturtzenegger repeatedly over the years that the Swiss banks act as brokers and where the Swiss banks loaned money with the shares of security, they also vote these shares so actually Dr.

564 Sturtzenegger's stock after he decided to cancel out his preferred voting rights, amounted to approximately 27 percent roughly of the voting shares of the stockholders meeting and I know that the half-paid dividend shares which were on deposit in the U.S. Treasury were shares which Interhandel had called in for cancellation and which were the subject matters of a controversy between the Department of Justice and Interhandel on the question of this cancellation.

The Department of Justice had moved to restrain from effecting the cancellation of these shares which were vested in the United States Government.

Q You knew that the shares in the hands of the Attorney General were sterilized against being used for voting purposes, didn't you?

A Yes, sir.

Q Now in the activities of Dr. Frey and yourself, in 1958 with Mr. Charles Wilson, had you not reached a point with Mr. Charles Wilson at that time where he was interested in proceeding in some way to act as the man to bring about a solution of this case?

A Mr. Wilson? Not in '58. Dr. Frey didn't meet him until '59.

Q All right. Let me accept your reply and go on with this question: Sometime prior to seeing Dr. Shaefer in Zurich

565 in October of 1959, had not a point been reached where Mr. Charles Wilson was ready to go ahead with any program that -- with a program which would seek to solve this controversy between the two countries?

A No.

Q Is it not true that as early as June of 1959, Mr. Spofford's name was suggested as personal counsel to Mr. Wilson in such a venture?

A Not as I recall, no.

MR. WILSON: I think we ought to staple these, Mrs. Harris, if you don't mind, so it won't give us a lot of numbers. Do you have a staple?

Can we use a paper clip? Will you mark these as if they were one exhibit, with our next number?

THE DEPUTY CLERK: Defendant's Exhibit Number 5, consisting of seven sheets, marked for identification.

\* \* \*

BY MR. WILSON:

Q Mr. Schmits, I show you Defendant's Exhibit for identification Number 5, and ask you if this is a handwritten letter from you to Mr. Sturtzenegger under date of June 10, 1959, of two pages, with a postscript of three pages, to which is attached -- and I want you to verify it --

\* \* \*

566

BY MR. WILSON:

Q Have a look at your handwriting and see if you can identify it as a letter which you sent on or about that date.

A This is my handwriting and it's a letter to Dr. Sturtzenegger dated June 10, 1959.

Q Would you see whether you find in there the reference to Mr. Spofford and also a reference to Dr. Sturtzenegger as being a small stockholder of Interhandel -- would you look at those two passages? And also that "Mr. C.E. Wilson is ready to proceed."

A Do you wish me to read any part of this?

Q You said you did not remember that Mr. Spofford was suggested that early.

A Now I remember from reading this letter.

Q Would you read the passage about Mr. Spofford and about Mr. Wilson's willingness to proceed?

A This is the bottom paragraph starting with that:

567

"However as Mr. Wilson told Dr. Frey in his earlier talks, had a mandate agency arrangement been brought into effect before now, Mr. C.E. Wilson would have retained other independent counsel to work out the best possible settlement mechanics. Mr. C.E. Wilson, after consultation in Washington at high level, determined that the counsel he would have chosen in the best interests of Interhandel would have been Charles Spofford, Esquire, of David, Polk, Wardell, Sunderland & Kendall.



"Mr. Spofford has Mr. Polk's position in the partnership and I understand is counsel to J.P. Morgan Guaranty Trust Company" -- shall I continue?

Q No, thank you. Now, with respect to observations made concerning Mr. Wilson's attitude in the past tense, he would have this and he would have that, he would have done this and would have done that, was the subject matter to which you are referring, the solution of the controversy between the United States and Interhandel over the General Aniline shares?

A Yes, principally. The recovery of Interhandel's rightful property.

Q Was there any difference from that which he undertook for Dr. Schaefer when he did accept the trust powers?

568 A It was the same objective, that he ultimately undertook at the request of Interhandel under Dr. Schaefer's control, yes, sir.

Q And, as early as even prior to June 10, 1959, Mr. C.F. Wilson under proper auspices was ready to undertake this task wasn't he?

A No, sir, not by a long shot.

Q What do you mean by selecting Mr. Spofford as counsel and all this sort of thing?

A Well, in evaluating all the manifold aspects of his responsibility, it would be an extraordinarily difficult responsibility to be trustee -- he had to consider that he be rep-

resented in such a trusteeship arrangement by some counsel as trustee -- and he undertook to consider whom he might have -- and I heard from him that he would undertake to have Mr. Charles Spofford.

Q Are you talking about the post-Schaefer or pre-Schaefer era?

A Pre-Schaefer era.

Q Was is spoken of in the pre-Schaefer era that there would be a trusteeship by Mr. Wilson?

A Yes, sir.

Q And it would be a trusteeship in which he would have irrevocable powers and sole discretion?

A Absolutely.

569

Q And therefore it was comparable to that which was eventually achieved in the way of power of attorney?

A I would not say comparable.

Q No?

A Not comparable. The powers speak for themselves.

Q In what respect did the plan with Mr. Wilson, prior to Schaefer's advent into the picture, differ from that as it was then envisioned? How did that differ from what was eventually put into effect with Mr. Wilson?

A Well, I would say from the record, from my recollection of the record of events known to me, the requests of me by agents of Interhandel, and of Mr. Charles E. Wilson at that

time, what was presented to us as their desires, was that they asked him to undertake to accept a mandate as their sole and irrevocable trustee so he would be given the sole right to negotiate and settle and give releases, and this was in a more or less definitive area at that time.

Q Wait. Why do you say a more or less definitive --

A My term "definitive." When one undertakes to negotiate an undertaking of this scope, you start off with the present conditions and criteria and you get the definitive basis in the minds of the gentlemen involved. It's a difficult task because the responsibilities are quite great.

Q Had you moved to that point?

570

A Beg your pardon?

Q Had you moved to that point with Mr. Wilson in the pre-Schaefer era?

A We moved to the point, as I described in my few words back in my testimony, of that concept.

Q Was not that similar to what eventually was written by you into the power of attorney?

A I would say no, not at all.

The lengthy negotiations I had in Switzerland with Dr. Schaefer had covered months.

Q That is not my point. My question is your relations with Mr. Wilson -- never mind Dr. Shaefer.

A I did not understand your question.

Q Your relations with Mr. Wilson in the pre-Schaefer era, when Dr. Frey was active -- and you say Dr. Frey was acting on behalf of Interhandel?

A Yes.

Q -- was to set up a similar trusteeship to that which was finally achieved, isn't that true?

A I don't like to label it similar, not at all. It was to seek a trusteeship, but this would have to be a trusteeship that would be acceptable to both parties in form, and it would have to be a trusteeship which would embody adequate powers and interests and take care of all equities and there were many questions that had to be discussed before the final instrument was ratified.

571

Q But didn't you have those things in mind in the pre-Schaefer era when you and Mr. Frey were talking to Mr. Wilson?

A Not at all. In the pre-Schaefer era, many of the things which were discussed with Dr. Schaefer were never discussed with Dr. Frey at all.

Q Well, anyway, you had gotten to the point with Mr. Wilson in the pre-Schaefer era, where the name of a counsel that he would want to choose for his personal guidance was before you, wasn't it?

A Yes.

Q And who mentioned that name to you, first?

A Mr. Charles E. Wilson.

Q And therefore, in the pre-Schaefer era, Mr. Charles E. Wilson was readying himself, if invited?

A Was doing what?

Q Was readying himself, was preparing himself, if invited, to go forward with the negotiations for the return of the General Aniline stock to the Swiss?

A I would not characterize it as that at all.

Q How would you characterize it, Mr. Schmitz?

572 A From my years of working with this gentleman, and knowing the workings of his mind, what he was doing was that he was giving this his serious consideration and making positive steps toward considering the possibility of accepting this, but I would not say he was readying himself, that's --

Q All right. What did you have to do after you interested Dr. Schaefer in a program, on October 26, 1959, what did you have to do of a persuasive nature to induce Mr. Wilson to take on the trusteeship that you had not done earlier when you and Mr. Frey were working with Mr. Wilson?

A Well, I had to make Mr. Charles Wilson get a very comprehensive grasp as intimately as one can, about the character and integrity of the people with whom I was dealing on the other side of the Atlantic Ocean.

Q You had not done this earlier in the Frey era?

A Oh, yes, but he knew these people. He did not know Dr. Schaefer and he did not know any of the controlling people

of Interhandel; and what I had to do was to report on my meetings with Dr. Schaefer and the representations made to me at the highest level by Dr. Schaefer.

Q Now hold on a minute.

A And I had to tell Mr. Wilson that I concluded from my long conferences with Dr. Schaefer that his word could be relied upon just as well as that of Dr. Sturtzenegger and the previous people I had known, and that Dr. Schaefer would indeed persevere and stick by the long-term objectives which had been known to Mr. Wilson over the years.

573

Q Mr. Schmitz, please, when you wrote the letter of June 10, 1959 and reflected upon the interests of Mr. Wilson in going forward and of engaging Mr. Spofford if he went forward, Dr. Schaefer was then in control of Interhandel, was not he?

A I would not say at all.

MR. O'DONOGHUE: I object to that question. I don't see where it says in the letter that Mr. Wilson is interested in going forward.

THE WITNESS: No he was not.

BY MR. WILSON:

Q Was not Mr. Wilson interested in going forward when you wrote that letter of June 10th?

A He was interested in going step by step to consider the possibility of accepting this responsibility.

Q Thank you.

And it was known that Mr. Schaefer and the other two banks had moved in, to run Interhandel, hadn't they?

A By whom?

Q It was known by Mr. Wilson? At June '59?

A By June '59 Mr. Wilson and I had had three days --

574 Q No, no. I am asking you did Mr. Wilson and you both know in June '59 that three banks had moved in and their representatives were on the Board and were running Interhandel?

A We knew it, yes.

Q Thank you.

You did not meet Mr. Spofford at that time?

A I did not.

Q An expression had been bandied around here about Mr. Wilson going to the White House at times. Did Mr. Wilson tell you from time to time that he went to the White House?

A Yes, sir.

Q Did he tell you whom he saw at the White House?

A Yes, sir.

Q Who was it?

A Well, starting when?

Q Well, for example, the first time he ever told you he went to the White House. Did not he go to the White House in connection with the Bell & Howell incident?

A No.

Q Had he not been there in connection with the Paul Davies' Bell & Howell incident?

A No, sir.

Q Had he not told you that he had?

A No, sir.

Q When did he tell you that he first went to the White  
575 House in connection with General Aniline?

A Oh. In connection with General Aniline's confiscation he was at the White House somewhere in 1956.

Q And with whom did he speak at that time, sir?

A Well, Sherman Adams, I gather.

Q How well do you gather? Were you told this?

A He talked about -- he told me repeatedly that he had been in and had talked with Sherman Adams.

Q In the era prior to your visit to Mr. Schaefer, in October of 1959, to your knowledge had he been to the White House on the subject of General Aniline -- within the Frey era?

A Specifically with General Aniline, I don't know what he discussed at the White House. I knew he had been there.

Q But did he tell you that he had sampled the attitude of the White House toward his participation at that time in the matters which Dr. Frey was talking to him about?

A I recall that after the three days of conferences at the Waldorf-Astoria that -- and I recall after my return from Zurich in January of 1959, that Mr. Wilson said he would



make some checks in Washington. I can't recall that he said that they were at the White House.

Q What were the checks in connection with, Mr. Schmitz?

576

A In connection with his investigation as to whether or not the United States Government would consider an independent American trusteeship desirable, and following the representations made by Dr. Frey to him as to the validity of the Swiss' rightful cause.

Q As this was in the era when Dr. Frey was talking to him and you were talking to him about undertaking a trusteeship, is not it possibly considering accepting it, yes? Did he say whatever checks he made in Washington had influenced him to believe that he could undertake the trusteeship?

A All he said to me was that he thought that he would be willing to proceed considering the possibilities at that point.

Q Now, this was in 1959. The Republicans were still in the White House, weren't they?

A Yes, sir.

Q Was Mr. Sherman Adams there in 1959?

A No, sir.

Q Did he say whether he spoke with President Eisenhower upon this subject?

A No.

Q Did he say to you whether he ever spoke to President Eisenhower upon this subject?

A In fact, I think he said to me he did not speak to  
577 President Eisenhower.

Q Did he tell you whether he spoke to Vice President Nixon, too, upon this subject?

A Yes, he said he spoke to Vice President Nixon.

Q What response did he get from Vice President Nixon?

A That he did not divulge to me in specific detail.

Q Do you remember writing a letter to Mr. Saagen in which you said you had seen a letter between the trustee and Mr. Nixon in which it was apparent that they were on quite friendly terms?

A I'd have to refresh my recollection of such a letter. I can recall now, I can recall that Mr. Wilson had a letter from Vice President Nixon in his office and I also knew that Mr. Wilson, Charles E. Wilson, was on quite friendly terms with Vice President Nixon, yes.

Q And is not it true that in the winter of 1959 Mr. Wilson was satisfied that as far as the Republican administration in Washington was concerned, he could undertake the trusteeship?

A No, sir.

Q Did he tell you to the contrary?

A What date?

Q In January or spring of 1959, did he say he was repulsed by the White House?

578

A What? No.

Q Well then, what was his report to you as to his sampling of the attitude of the Administration in Washington in the early part of 1959 when he was talking about Mr. Spofford as to whether he could undertake properly such a mission?

A All that Mr. Charles E. Wilson told me was that he was favorably considering the matters to devote his time and energies to considering it and that he had plenty of other things to do besides this unless he was serious about considering it, and all he did was inform me that he would have an independent counsel and that it would be Mr. Spofford. He did not tell me all his reasons for his decisions.

Q He did not tell you whether he had sampled the atmosphere in Washington on this at all?

A Yes. Oh, yes.

Q What did he say?

A He said he checked the climate or used expressions like that, and felt satisfied that he should proceed.

Q In other words, after he checked the climate he came back and told you he was satisfied he could proceed?

A He would proceed to consider the matter.

Q Yes. He had a satisfactory reaction from the Admin-

istration in Washington that he would give consideration to proceeding with the matter, is that a fair statement?

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A I would say so because he did proceed.

Q No. I am talking about before Schaefer.

A Sure. I know what you are talking about.

Q And your answer is that even in the pre-Schaefer era he had sampled the climate in Washington and as far as that was concerned it was favorable to his considering undertaking the trusteeship?

A Wait a minute.

Q Is that a fair statement?

A No. No, that is not a fair statement.

Q Well, you say it your way.

A It was favorable for him to spend, devote his time and energies considering a trusteeship, not just any trusteeship.

Q Well, let me come back again, and tell me why the trusteeship which he took in May of 1960 differed from the trusteeship which he was contemplating in the early part of '59?

A Well, the trusteeship he was contemplating in '59 was a word only. It was a label. The trusteeship which he accepted as an option to accept and finally exercised on May 25, '60 was a specific power and trust which is an exercised ratified document which he was able to consider after he was

able to consider all the representations made orally and otherwise by the principals who were conveying the powers to him.

580

Q In your discussions with him in the forepart of '59, Mr. Schmitz, had you been envisioning a different kind of trusteeship?

A We, always from the beginning, envisioned an irrevocable, exclusive power of the trusteeship. As my negotiations with Dr. Schaefer went along, Dr. Schaefer asked me on repeated occasions in meetings about the details of the settlement difficulties in the United States and I mentioned to Dr. Schaefer the problem with Old Shares Investment Corporation, Atlantic Bingen, and the tax case and all the different things that had to be resolved in the United States; and in repeated meetings with Dr. Schaefer in Zurich I outlined with Dr. Schaefer that the Government would first have to be put into a position whereby they would know enough to settle this properly and that the trustee should have an instrument which would be self-operating. In other words, that once the trustee accepted the powers, that these powers had to be so comprehensive to be self-operating and indestructible so that he could take care of all the collateral matters which involved giving quittances for all causes that would arise and any claims that would arise, and that the trustee as a trustee should never be surchargeable and that there would be ample funds available for the trustee to pay all liens in the United States out of the

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premises; and there I cited to Dr. Schaefer that there were the matters of the vested stock, the dividend stock, which is in controversy, and I cited to Dr. Schaefer that there were the problems with respect to the intervenors and that there were problems with respect to the matters of this tax claim which had to do with Standard Oil, Atlantic-Bingen and Old Shares Investment Company --

\* \* \*

THE WITNESS: That there were problems with respect to the matters of the tax lien which had to do with Standard Oil and Atlantic-Bingen, and Old Shares Investment Company, and long-standing matters which would be peripheral to the settlement. And over a period of months, many of these things were discussed, and therefore, that the powers which the trustee had to get would have to be broad and embody the possibility to handle all these things over a period of time.

\* \* \*

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Q In your trying to prevail upon Mr. Wilson in the pre-Schaefer era, to undertake this task, and you did try to prevail upon him, did not you, sir?

A Oh, yes, sir.

Q Did not you find it necessary to talk to him about the same matters that you say that later on you talked to Dr. Schaefer about?

A Oh, yes.

Q Did you not have to warn him about Atlantic-Bingen, did you not have to warn him about the Old Shares Corporation, sir?

A I talked to Mr. --

Q Did not you have to talk to him about all the facets that you knew of concerning Interhandel, right?

A Right.

Q Okay. So that after having warned him of all those things and the liens and what to do with the money and everything else, Mr. Charles Wilson, in the spring of 1959, had arrived at the point where he was thinking about who his counsel would be, is not that right, sir?

583 A What he was thinking about was that if he were to consider a specific trust power to be preferred to him after it would be developed, that he would have an independent counsel and he was thinking about who that would be.

Q Then what did you do between October and April or May, that you had not done before in prevailing upon Mr. Wilson to undertake this task?

A Oh, a number of things, a number of things. What occurred between October and May was that Mr. Wilson was interested in knowing the posture of the Interhandel Board of Directors, vis-a-vis the United States of America.

Q Wasn't he interested in that in the winter of 1959?

A He was interested in --

MR. O'DONOGHUE: Your Honor, I object to this. The witness was asked an extremely broad question, "What did you do between October and May '59 to '60" and he began telling him. He had hardly started when he was interrupted. I think this calls for a very long answer, probably. And he shouldn't be interrupted.

\* \* \*

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MR. O'DONOGHUE: Just so the witness is given the opportunity to answer fully and if he states one thing that that not be regarded as the entire answer.

THE COURT: I understand that. I understand that perfectly.

MR. WILSON: I agree with that thoroughly.

BY MR. WILSON:

Q Mr. Wilson knew who the Interhandel Board was in the first few months -- what's the matter, Mr. Schmitz?

A You are asking another question, are you?

Q No, no. I am interrupting your narrative, as the Court says; as you express one reason I am permitted to interrupt you.

A Yes.

Q And ask you to explain that reason, and then you go on afterwards and give a second reason. And you have said that one of the things that -- you began your answer by saying one of the things that you had to prevail upon Mr. Wilson about was



the status and personalities of the Interhandel Board between October of 1959 and May of 1960, and my question to you was, was not that not the same Board, was not it so constituted in the early months of 1959?

585

A I didn't say anything about that. He had to know about the status of the Board. I said he had to understand what the current posture of the Board was towards the United States of America.

Q What --

THE COURT: Wait a minute. No. No. Let him finish his sentence. What were you saying?

THE WITNESS: Your Honor, I was saying that Mr. Charles Wilson, to my knowledge, wanted to know what the current posture of the Board was towards the United States of America, what their conciliatory posture was. If he were to represent the stockholders at the Interhandel company, who were plaintiffs against his Government, he wanted to know specifically in greatest detail about the posture of the Interhandel Board; secondly, he wanted to know about what their long-range policies would be. In other words, what their posture was toward his trusteeship, his mandate.

BY MR. WILSON:

\* \* \*

Q Did he ask those same questions in the early months of '59?

586

A No. No, he did not, no.

Q And you did not volunteer subject matters that would have been answers to those questions in the winter, or the first few months of '59?

A I did not, but Dr. Frey came over here and we had three days of meetings at the Waldorf-Astoria during which period of the three days Dr. Frey, as a partner of Dr. René Niederer and as an associate counsel of the Swiss Government at The Hague, came over here as representative of Interhandel in order to prevail upon Mr. Wilson to consider this possible mandate, and he spent three days here as a professional attorney who had a long-standing interest in connection with matters explaining to Mr. Charles E. Wilson about the long-term positions of the Swiss on this property seizure question.

Q All right. You were present and heard these observations?

A Oh, yes.

Q And therefore Mr. Frey, in the first few months of '59 did satisfy Mr. Wilson about the thinking and posture, as you call it, of the Board of Interhandel; is that right?

A Not at all. Not at all.

587-589

Q This did not come up?

A Oh, yes. What came up was that Dr. Frey explained specifically the stock control position of Interhandel. He explained specifically the position of the big banks on the

Board. He explained specifically the position of the Swiss Government at The Hague. He explained specifically the details of the great difficulties the Executive Committee of the Board had vis-a-vis certain minority stockholder groups, intervenor groups.

Q Now, even though Dr. Sturtzenegger had resigned from the Board, Mr. Reinhardt, who was a senior officer of Credit Suisse, and was on the Board of Interhandel, wasn't he?

A He was one of the Triumvirate of the Executive Committee

Q And that bank was a client of Niederer and Frey, isn't that right, sir?

A I was led to understand that, yes.

\* \* \*

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BY MR. WILSON:

Q Mr. Schmitz, you mentioned that when you went to Europe in April of 1962 and saw Mr. Saager, you ran into Mr. Brupbacher about the same time. Do you remember that testimony?

A Mr. Saager asked me to confer with Mr. Brupbacher at that time, yes, sir.

Q And I believe you criticized the conduct of Mr. Schaefer to both of these gentlemen, didn't you?

A Yes, I did.

Q You remember you had a pretty critical outlook on Brupbacher, didn't you?

A Not really. He was rather unique, I think. He was an interesting sort -- a complex sort of interesting character.

Q Don't you remember that on or about December 20, 1960, you and the Trustee were pretty irritated over Brupbacher, and you wrote---

MR. O'DONOGHUE: What was the date?

MR. WILSON: On or about December 20, 1960.

591

BY MR. WILSON:

Q And you wrote a long letter to Mr. Saager at that time in which one thing you criticized was Brupbacher?

A I might have. Brupbacher was always publishing all kinds of stuff about the management of the company, attacking everybody else's--- Well, not everybody else's; that's not a precise statement. But he was apparently quite an aggressive individual, shall we say, in Switzerland.

Q As a matter of fact, wasn't it about that time that the Trustee was so irritated with him that he discussed with you whether he should give up the Trusteeship, if Brupbacher was going to run around, and talk to people the way he did?

A Brupbacher was not a member of the Board. I don't think the Trustee ever took any particular serious consequences of--- Nothing a man like Brupbacher could do would make Mr. Wilson abandon his duties, no, sir.

MR. WILSON: May I have Exhibit 103 of the Plaintiff?

BY MR. WILSON:

Q Look on page 7 of Exhibit 103, Mr. Schmitz, which has already been identified as your letter to Mr. Saager, and see if you have a whole topic entitled, "So, now, here along comes Mr. Charles Brupbacher." Do you find that on page 7?

592

A Yes.

Q Did you see what the Trustee's appraisal of Mr. Brupbacher was, of being conceited and wreckless?

A Right, yes.

Q Do you share that view?

A I think so.

Q On page 8 you describe him as acting with the "collosal arrogance and monstrous affront," -- see if that isn't so, sir?

A What page did you say?

Q Page 8. You have these numbered by the Roman system, I think.

A This document is falling apart.

Q We'll find VIII there, if you just persist.

A Yes. (Reading)

Q And then, at the top of Page IX, don't you find this analysis of Mr. Brupbacher culminated in the Trustee telling you the preceding evening that "If this thing persisted," he would wash his hands of the whole affair?" and "And all that was needed was a telegram from Schaefer and he would do so?" Do you see that at the top of page IX?

A Well, do you want me to read what it says on the top of page IX?

Q Sure. Sure.

593

A I will read: "Last evening the Trustee told me that the only reason he has concerned himself with this was issuing from his People-to-People activities with President Eisenhower; and that the equities' protection, the principle of private property resolution with honor for America and Switzerland all gave purpose to this and justified his time and effort. Failing this, he was going to wash his hands of it, and all he needed was a telegram from Schaefer and he will do so."

Q Doesn't that follow on the heels of your page-and-a-half attack upon Mr. Brupbacher?

A Yes.

Q Thank you.

MR. WILSON: By the way, your Honor, I meant, before I started, to offer in evidence Numbers 3, 4 and 5 which were identified by me, but not yet offered.

\* \* \*

MR. O'DONOGHUE: I have no objection.

594

THE COURT: Without objection, 3, 3-A, 4 and 5 are admitted in evidence.

\* \* \*

BY MR. WILSON:

Q Mr. Schmitz, you identified the affidavit which your father had made, Number 131, as this document, I think. Is that so, sir?

A (Examining exhibit) Yes, sir.

Q Did you have a large hand in the preparation of that document?

A I had a large hand, upon direction of the Trustee, to work with my father and collate and spend a great deal of time with him in his preparation of it, yes.

Q In a word, are the contents of that affidavit favorable to or are they unfavorable to the cause of Interhandel?

A Favorable.

Q Why was it when the withdrawal of the Trustee seemed imminent in '62 that you--- I will put this; you may not like it -- threatened to send this affidavit to the Department of Justice?

595

A I never threatened anything, and this was delivered to the Department of Justice at the special request of the Trustee's attorney.

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Q And was it to be in the interest of Interhandel?

A Absolutely and positively.

Q And there is nothing in that which is inimical to the cause of Interhandel, is there?

A It is an affidavit which would be subject to cross-examination. I would say the purpose of this was to help Interhandel.

Q Thank you. Why was it at that moment when the activity of the Trustee was coming to an end?

A It was not coming to an end.

MR. O'DONOGHUE: What moment is this?

BY MR. WILSON:

Q I said in 1962. Isn't that when you delivered it?

A When? When in '62?

Q When you delivered it in '62. Do you know the date?

A The Trusteeship was not coming to an end.

Q It was not coming to an end?

A No, sir.

Q Did you say that you delivered it at the request of the Trustee?

A I had a conference at the request of the Trustee, with him and his lawyer, Mr. Spofford. Mr. Spofford stated



596 that the affidavit should be delivered to the Department of Justice, that this could become the subject matter of evidence for the possible forthcoming 9 (A) litigation.

Q "Forthcoming?" What do you mean "forthcoming" now?

A It was still pending litigation, and that the purpose of creating this affidavit had been to perpetuate the knowledge of my father on certain matters contained therein; and I was told that the right way to deliver this, which would be of benefit, would be to deliver it simultaneously in Zurich to the directors of Interhandel and simultaneously to the Department of Justice,---

Q Now, had you given---

A (Continuing) --in order to help the beneficiaries of the Trustee.

Q Had you given a copy to the Trustee before then?

A The Trustee had had this delivered to him by my father.

Q And had Mr. Spofford an additional copy of it?

A Well, there were five duplicate originals.

Q My question to you is: Do you know whether Mr. Spofford got a copy of it?

A Oh, yes indeed.

Q And you say the Trustee was still active in the

597 in the performance of his trust?

A Yes, he was.

Q And Mr. Spofford was still counsel for Mr. Wilson?

A Yes, sir.

Q Why was it that they did not deliver this affidavit to the Department of Justice?

A Well, my father had an attorney who had been his attorney in Washington, by the name of Gordon Eckol, Esquire, and actually, the Trustee asked me to deliver it to his beneficiaries in Switzerland; and it worked out that it was delivered by my father to the Attorney General's Office that day by virtue of timing convenience. It was a sure way to get it there, I guess. I don't know the details about it.

Q Well, did you and Mr. Spofford and Mr. Wilson discuss the manner in which this should be delivered to the Department of Justice?

A Oh, I'm sure we must have. Yes, I would say yes.

Q And was it the concurrent view of all of them that Mr. Gordon Eckol should be the carrier of the document to the Department of Justice?

A I can't speak for the other people on that. I would say so. I think we tried to do things the right way.

Q Did Mr. Spofford refuse to deliver it to the Department of Justice?

A By no means. He wanted it delivered to the Department

598 of Justice.

Q Did he ask to be permitted to deliver it?

A Beg pardon.

Q Did he ask to be permitted to deliver it?

A No. He just wanted to make sure it was delivered period. It speaks for itself.

Q Now, at a certain time, you called upon Mr. Murray Bring and Mr. John Wolf in the Department of Justice, didn't you, sir?

A Well, I didn't call upon them. I did not know they existed. I went to the Department of Justice and they were called into the room.

Q Were they the only two in the room?

A No, there was---

Q Who else were in the room on this occasion?

A There was a Mr. Carl Erdley there.

Q Can you describe to his Honor what the positions of these gentlemen were in the Department of Justice?

A Well, I can tell what I understood them to be.

Q Go ahead.

A I understood Mr. Murray Bring was Mr. Orrick's assistant, and I understood that Mr. John Wolf was counsel on this litigation; and I understood that Mr. Carl Erdley was the Chief of the Litigation for the Department of Justice.

599 Q And on that occasion, you brought with you an affidavit, didn't you?

A Yes, sir.

Q And did you testify in this case that material facts were being concealed, and that this was one of the purposes of your going to the Department of Justice?

A Yes, sir.

Q Where is a copy of that affidavit? Do you have one?

A I think so.

\* \* \*

600 Q How long was this affidavit in pages?

A I would have to look at it to know.

Q Who prepared this affidavit for you?

A I did it myself.

Q Was it in longhand or typewriter?

A Typewritten.

Q Did it contain the charge of the concealment of material facts?

A I charged that material facts had been concealed from the Trustee.

Q And whom did you charge? Who did you charge?

MR. O'DONOGHUE: Excuse me. This is probably what you are looking for.

MR. WILSON: Thank you.

601

Q Who did you charge with having concealed material facts from the Trustee?

A Read the affidavit.

Q Let me do the questioning.

A Excuse me. I'm sorry.

Q What is your recollection as to whom you charged with concealing facts from the Trustee?

A I charged that the directors of Interhandel were concealing facts from their own trustee.

Q Was this a concealment of facts which would have strengthened the Government of the United States' position against Interhandel?

A I think that the concealment of facts greatly weakened the strong positions of the Swiss beneficiaries who had a right to have the protection of the trustee.

Q Were the facts which were concealed facts which related to the relationship between the trustee and Interhandel, or were they facts which related to the control or taint of Interhandel?

A No. It had to do with the concealment from the Trustee of activities which he had a right to know about and matters told to me in Switzerland by two directors of Interhandel.

Q Which two?

\* \* \*

602

THE CLERK: Defendant's Exhibit Number 6 marked for identification. It consists of ten sheets.

\* \* \*

BY MR. WILSON:

Q Mr. Schmitz, does Exhibit Number 6 for identification of the Defendant's represent a copy of the affidavit which we have been talking about that you said you delivered to Messrs Erdley, Wolf, and Brine?

A (Examining document) Yes, sir.

Q That is a copy?

A Yes, sir.

Q Is this a conformed copy in that it has a date on it, or not?

A Let's take a look. (Examining instrument)  
Yes, this is.

Q Dated what, sir?

A Dated the 18th of April 1962.

Q Do you recall whether your delivery of it was around that date?

A It was shortly thereafter.

603

Q What came of the delivery of this affidavit to the Department of Justice? That is to say, what reaction did you receive at any time from any official of the Department with respect to this affidavit?

A None.

Q How long did the conference last?

A I would say about 20 minutes.

Q Did anybody read this affidavit while you were there?

A I think so, yes.

Q Was any comment made upon its contents?

A No. I don't recall.

Q Were you asked, what was the purpose of your coming and delivering this affidavit?

A Yes.

Q What did you state was your purpose?

A My purpose was to defend this trusteeship, to defend the purposes of keeping all parties who had an equitable interest in this matter informed as to this, and that I had been in Switzerland in conference with the two directors of Interhandel, Mr. Brupbacher and Mr. Saager, and that they had concealed from the Trustee the activities of Dr. Schaefer themselves, in transacting things in concealment from the Trustee and in violation of the terms of the powers of trust.

604

Q Did you not know that about that time Mr. Wilson had written a letter to Dr. Schaefer expressing a willingness to withdraw whenever he wanted him to?

A He had not withdrawn.

Q I didn't ask you that question. Did you not know

a letter went out from Mr. Wilson to Dr. Schaefer expressing a willingness to withdraw whenever Dr. Schaefer wanted him to?

A I did not know that.

Q Did you learn later on that there was such a letter?

A I don't know -- don't recall, no.

Q The trustee didn't tell you that there was such correspondence?

\* \* \*

THE WITNESS: Well, I know that the Trustee was very, very deeply concerned and eager to perform his duties, but he was very, very angry and---

BY MR. WILSON:

Q Mr. Schmitz, my question is a simple one: Did he tell you about this or not?

A Did he tell me about having written?

605 Q Yes.

A Written what?

Q To Dr. Schaefer that he was ready to withdraw whenever Dr. Schaefer asked him to?

A I can't remember that.

Q Let me show you a document which has been marked Number 7 for identification.

(Defendant's Ex. No. 7 marked.)



This is a document dated March 26, 1962 from Mr. Wilson to Dr. Schaefer. Were you made aware of the despatch of that letter around the time that it was sent?

A May I read this?

Q Of course, you may.

A (Reading Exhibit No. 7) I would say I have never seen this before. But May I read it?

Q I said you may read it; if the Court will permit you to take the time to read it, I am delighted to do it.

MR. WILSON: May he take the time?

THE COURT: Yes, of course.

THE WITNESS: (Read Exhibit No. 7. Thank you. I have read it.

BY MR. WILSON:

606 Q Is it a fair epitome of that letter for me to have asked you as I did, "Did not Mr. Wilson write Dr. Schaefer in March of 1962, prior to your visit to the Department of Justice, saying he would be happy to withdraw whenever---

\* \* \*

THE WITNESS: Excuse me, Mr. Wilson.

BY MR. WILSON:

Q Is that a fair epitome of that letter for me to say that?

A I would say, "No."

Q All right. The arrangement with Mr. Wilson was

that he wanted no fee for whatever he did, isn't that true, sir?

A That is correct.

Q And that he only wanted his expenses, right?

A That is correct.

Q And that he wanted his personal counsel paid, whatever was the fair charge which Mr. Spofford would make for the services which he rendered in the cause, isn't that true, sir?

A I would only be able to assume that.

Q Sir?

A I would only be able to assume that. I would not  
607 know for sure.

Q Did you know Mr. Spofford was paid?

A I was in his office the moment he was paid.

Q Did you know that the Trustee had a deposit of some \$25,000 as an expense account from which to draw?

A Yes, sir.

Q Read the last paragraph to his Honor on the first page, if you please?

A "For the purpose of terminating the Trusteeship, I am preparing a simple accounting showing the payments from the Trustee's Account at Morgan Guaranty Trust Company. I am also asking Mr. Spofford to render me a statement for his services during the Trusteeship which will be submitted to you with my account."

Do you want me to read any more?

Q Not for me. You can if you want to.

A It's up to you.

MR. WILSON: I offer in evidence Defendant's Exhibit 7 for identification.

MR. O'DONOGHUE: No objection.

THE COURT: Without objection, it will be received.

\* \* \*

BY MR. WILSON:

Q Mr. Schmitz, at one point in my cross-examination

608 of you yesterday, when it was really just beginning, you volunteered the phrase that you were a wealthy man at one time. Do you remember that, sir?

A Yes, sir.

Q When did you cease to be a wealthy man?

A By degrees.

Q When did it become necessary for you to borrow money from Dr. Sturzenegger, because you said you were without funds?

A I never said that to Dr. Sturzenegger.

Q You did borrow money from Dr. Sturzenegger, didn't you?

A He advanced me money on an advance account because I was operating as his agent.

Q When did you cease to operate as his agent?

A I would say when I started operating as the agent under my commission for Dr. Schaefer.

Q And Dr. Sturzenegger advanced no money to you after that date?

A Dr. Sturzenegger--- The last time Dr. Sturzenegger advanced me any loans for the purpose of doing my work was, as I recall, I think December 1958.

Q Mr. Schmitz, are you suggesting that you had a

609 financial arrangement with Dr. Sturzenegger, and that whatever payments he made to you were not truly loans, but were advances on account of an agreement?

A They were loans, but they were to be repaid only out of the recovery of the General Aniline & Film---

Q What was the agreement with Dr. Sturzenegger as to what you were to receive and when you were to receive it?

A Well, our agreement started in 1946, and around those days I was a stockholder of Interhandel, and in those years we agreed that we would undertake to contribute all we could towards the problem of solving the General Aniline & Film matter, to recover.

I undertook to use such assets as I had in order to do what was necessary to do such things as I could along the lines that I did eventually do.

Q What was your wealth at that time?

A Well, at one point I had more stock in Interhandel than all the intervenors you were talking about combined.

Q Mr. Schmitz, that does not answer my question, because you told me yesterday, in confirmation of my inquiry, that from Pearl Harbor to '65, Interhandel did not pay a dividend on its stock.

A That's right.

Q All right. My question is: What was your net value,

610 net worth in '46?

A Oh, it ran into the hundreds of thousands of dollars.

Q How many hundreds of thousands of dollars?

A I would not know at the moment.

Q What valuation were you putting on the I. G. Chemie shares at the time you made that valuation?

A Well, the I. G. Chemie shares were running--- I had half-paids and I had full-paids, and the I. G. Chemie shares, if I recall correctly, in the late forties were running around 500, 600, 700 francs a share. They varied.

Q You mean the fully-paid shares were selling for as much as 500 or 600 Swiss francs?

A Yes. They were varying between 5, 6 and 7.

Q All right. And the half-paid shares were half of that less the discount, weren't they?

A That's right.

Q All right. Now what are we talking about? Your wealth, is it \$500,000, \$300,000, is it \$900,000? You said it was in the hundred thousands.

A I would say, if you added my home and my tangible personal property and my life insurance and a lot of things---

Q Was your life insurance, it wasn't paid up, was it?

A No.

611

Q Let's leave that out.

A If we just took all my assets, I would assume it would be several hundred thousand dollars.

Q Did you say 7 or several?

A Several.

Q Now, what was your average annual income from that wealth?

A Well, I didn't get any income on the Interhandel stuff, and I had some General Aniline stock which my father had given me over the years, which would pay whatever the record shows.

Q Can't you give us a round figure of what income you were having in the late forties from investment, from your own wealth?

A Oh, I would say five or six thousand a year, seven thousand a year.

Q And Mr. Schmitz, you were beginning to tell us that since 1946 you had some kind of an arrangement with Dr. Sturzenegger, I assume because of his prominence in the Chemie-Interhandel picture, is that so?

A No. Because of the trust between us and the confidential relationship and the problems at hand to be worked on.

Q Were you rendering service to Dr. Sturzenegger unrelated to Interhandel?

612

A No, sir.

Q Then, the service that you were called upon by Dr. Sturzenegger to render had to do with Interhandel?

A Yes, sir.

Q Did it have to do with Interhandel's investment in General Aniline?

A Yes, sir.

Q Did it have to do with anything else but the investment of Interhandel in General Aniline?

A No, I can't think of anything.

Q Thank you. Now, did you enter into an arrangement in 1946 whereby you were to be given advances?

A No, I was spending my own capital.

Q When did you make a financial arrangement with Dr. Sturzenegger, if you did, whereby he made advances to you?

A Well, the record would show that. I would have to see the record.

Q Was it after '50 or before '50?

A I think it was after '50.

Q Was it into the fifties -- up to '58?

A Yes, sir.

Q And you were his agent receiving compensation from him in relation to his interests in General Aniline by way of Interhandel, is that right, sir?



613

A. Receiving no compensation, these were loans to be repaid by me out of the recovery, or out of anything--- In other words, I would have to repay him out of the settlement avails--- one way or the other.

Q All right. Then, they weren't advances; they were loans, weren't they?

A Well, the record shows that they were a dollar advance account.

Q Let's be clear about this. During the period of 1946 until 1958, you were engaged by, or contracting to be engaged by a variety of industrialists who wanted to buy General Aniline from whoever could sell it to them, isn't that right?

A Not from whoever--- No, it's not right.

Q What's wrong?

A You say "whoever could sell it to them."

Q Well, from I. G. Chemie, from Interhandel?

A Well, that's right.

Q All right. Now at the same--- At that time you were taking compensation from, for example, Shields & Company, weren't you?

A Yes.

Q Were you taking compensation at the same time--- And you were the agent of Shields & Company, weren't you?

614

A That's right.

Q And agent of Remington-Rand, weren't you?

A Yes, sir, that's right.

Q And agent of W. R. Grace and Company, weren't you?

A That's right.

Q Were you at the same time under contract with Dr. Sturzenegger to protect Dr. Sturzenegger's interest in General Aniline, via Interhandel?

A I wasn't out to protect Dr.--- No. The answer is "no" to that.

Q Then, what was your arrangement with Dr. Sturzenegger whereby he would advance money to you, whereby you would repay him out of something?

A My arrangement with Dr. Sturzenegger was that he asked me to devote all the energies I could and all my own resources, and he would help me all he could if I would keep working and traveling and keep trying to keep stability and find--- He said, "Bob, we must, as the Board of Directors of Interhandel, we must devote all our energies to every possible aspect, diplomatic, legal and possibly through the industrial contacts. I want you to report to me. I want you to do all you can in the United States to advance the truth of our cause, and I will help you. You help me."

Q Was he paying you for this?

615

A He gave me these loans unsecured.

Q Were these loans made to you in consideration of your doing the things which he asked you to?

A They were--- Well, I spoke out, as they were made to me to help me help myself and help Interhandel.

Q Have you repaid those loans?

A No, sir.

Q Has Dr. Sturzenegger made demand upon you for those loans?

A No, sir.

Q Do you and he have any understanding that they have been liquidated?

A No, sir.

Q Do you give current notes?

A He sends me statements.

Q And do you confirm them?

A I have confirmed them, yes.

Q And what is the total for the statements as of now, for the advances which have been made?

A That would be reflected in the statements, which are available.

Q I haven't seen them. Give us an idea of what the amount is.

A I would guess 280,000 Swiss francs.

Q And the rate of exchange, we figure roughly---

616

A I'm guessing.

Q And the rate of exchange we speak about colloquially is 4-to-1, don't we?

A About that.

Q So, to get the dollars, you divide 4 into the 270,000 or 280,000 Swiss francs, and you get \$70,000, isn't that right?

A Well, on that basis, I would say yes.

Q Do you pay interest on those loans?

A No, the interest is being added, accumulated.

Q Have you ever paid a single penny on account of the principal or interest of those loans?

A No, sir, I haven't done that and I haven't been asked to do it.

Q What is the maturity event of those loans?

A The maturity event of those loans is when I am compensated for my share equity interest out of the settlement of General Aniline & Film.

MR. WILSON: Will your Honor indulge me a moment?

Mrs. Harris, will you give this the next number please?

THE CLERK: Defendant's Exhibit 8 marked for identification.

(Defendant's Ex. No. 8 marked.)

617

BY MR. WILSON:

Q Mr. Schmitz, I show you Defendant's Exhibit for Identification Number 8, and ask you if that is a copy of a letter which you wrote to Dr. Sturzenegger on or about April 2, 1953.

\* \* \*

BY MR. WILSON:

Q This letter says, in its first paragraph, that you "wanted to include this personal note that our recent banking negotiations had been completed, in order to express my appreciation for your generous assistance." Can you remember back that far what that particular transaction was?

A Well, he reciprocated by generously assisting me in the work after I had been assisting Interhandel with my capital, and he was a good friend.

Q No, that isn't what I asked you. "...our recent banking negotiations."

A Well, that must have been one of the advances.

Q You mean, he advanced money.

A Yes, sir.

Q Then, you said, "After my years of business adversity, it was heartwarming to find someone who would have sufficient

618 confidence in me to do what you did. Thank you."

Is that a fair status of your condition at that time?

A It speaks for itself, yes.

Q Thank you. Now, you said a moment ago why you expended money for Interhandel.

A No, I didn't say---

Q Did you mean to say you expended your wealth for Interhandel?

A I didn't say that. I said I did it for Sturzenegger and the recovery of Interhandel, identified, since Interhandel--- Sturzenegger was Interhandel, in my mind.

Q How did you expend your wealth for Sturzenegger, sir, and in what years and in what manner?

A Well, that's a matter of--- It would take me a matter of running over years; and I did it in ever manner as the occasion demanded that I do, over the years, here and in Europe.

Q When war broke out between the United States and Germany, you were twenty years of age, weren't you?

A Yes, sir. Wait a minute. When did it break out? '41.

Yes, sir.

Q Twenty years of age.

A Yes, sir.

Q Up to that point, you hadn't expended a dollar for

619 Sturzenegger-Interhandel, had you?

A That's right.

Q During the war, did you expend any money for Interhandel?

A I would say yes.

Q In what respect, sir?

A Well, my father was Interhandel's agent over here in the United States. He ran the company. He was responsible for---

Q During the war, I'm asking now.

A During the war, yes.

Q '42 to '46?

A That's right.

Q Did you spend any money?

A Oh, yes.

Q To what extent, sir?

A Well, my late father had his bank accounts frozen, and he was being pressured by the United States Treasury Department, and he was under three criminal indictments -- rather, not indictments, but the Government was trying to obtain three indictments against him -- and he had grievous troubles. And I -- to answer the question---

Q Go ahead.

A I advanced moneys from my unblocked assets to help

620 my father who had blocked assets, because my father had to have a license from the Treasury Department, Office of Alien Property to -- I guess it was a combination of things later -- in order to even buy groceries.

Q But he did make applications for permission to spend his own money, and he was given permission, wasn't he?

A Yes, but he couldn't invest or reinvest his stocks. He was under a very tight rein, as far as everything he could do. So I helped my father with my own money.

Q You were not blocked, were you?

A No, sir.

Q Did you or your father during the war years hold a license from Foreign Funds Control of the Treasury Department to act for or represent Interhandel in this country?

A Not I.

Q Did your father?

A I wouldn't know that off-hand.

Q You knew your father was not eligible, Mr. Schmitz, because he had his funds blocked, and he would not have been given a license, don't you, sir?

A I can't draw that conclusion.

Q Don't you know that was a fact that he didn't have--

A I don't know it for a fact.

Q Don't you know I had a license?



621

A You're a professional attorney.

Q I will ask you: Did you know I had the license?

A I don't know what you had.

Q Haven't you learned since, I had the license to represent Interhandel?

A Positively not.

Q But your not telling his Honor that your father had a license?

A I'm not telling his Honor that at all.

Q Now, come the end of the war, you became employed by Remington-Rand, didn't you?

A Yes, sir.

Q And you remained in the employ of Remington-Rand for between three and four years, didn't you?

A From 1947 -- three years.

Q No. '46. You went to Switzerland in '46, and you quit in mid-50, didn't you?

A Not mid-50. I quit the moment the intervenor---

Q All right. But it was about four years.

A About four years.

Q You were being compensated at a decent salary during that period of time?

A I think for my professional work as a senior research and development engineer, yes, plus the bonuses I got, I was pretty happy.

622 Q Did you spend any of that money that you earned from Remington-Rand in behalf of and in the interest of Interhandel, for Sturzenegger?

A I did it to support my wife and children.

Q Of course you did. Now, when you ceased to work for Remington-Rand and went to work for Shields, you were receiving a monthly stipend there, weren't you, for part of the time?

A Yes.

Q Did you expend any of that money on behalf of Dr. Sturzenegger or Interhandel?

A Well, that money was also to support my wife and children.

Q Thank you. And when you moved from Shields & Company through the period, the abortive period in relation to the Atlas Corporation and Mr. Floyd Odium, you went to Grace, didn't you?

A You're backwards, Mr. Wilson. I was at Shields after Floyd Odium, not before.

Q Thank you. But at least, those were the steps. You really weren't with Floyd Odium at all, were you?

A No -- Well, what do you mean "with"? Of course, I was with Floyd---

Q Did you ever draw a dollar from Floyd Odium?

A No, sir.

623

Q Sir?

A No, sir.

Q That's what I mean. Now, after Shields & Company, you went to Grace, didn't you?

A Yes.

Q Did you receive a decent salary from Grace?

A Yes, sir.

Q Here again, as was perfectly natural, and I don't mean to be critical of you one bit -- You spent it on your family, didn't you?

A Well, I was working to support a family.

Q Certainly, you were, and a large family, a growing family.

A Pretty big! I have eight.

Q Huh?

A I have eight.

Q I know you do. So, you didn't have any money to spend on Sturzenegger or Interhandel during that period of time, did you?

A Oh, yes, definitely.

Q You mean to say to me that you were spending money in Interhandel's behalf when you were working for a concern who wanted to buy from Interhandel?

A You said Sturzenegger. I understood the question to

624 be, that I didn't spend any money, that would be on behalf of the interests of Sturzenegger or Interhandel.

Q Well, you answer it that way. Let's assume that I stated it alternatively. But you told me Sturzenegger's interests were always Interhandel's interests.

A In my mind, Sturzenegger, with its Preferred stock since I was a boy, was Interhandel.

Q And Interhandel was a synonym, to you, for General Analine, as far as the sequence was concerned?

A Yes, it was all the same fa---

Q Yes. Now, during the period you were working for Grace -- that was from 1953 to '57?

A No; to May '56.

Q Thank you. -- how were you spending money in behalf of Mr. Sturzenegger?

A Well, I didn't say in behalf of Mr. Sturzenegger. We put it all in the "same basket." The interests of Mr. Sturzenegger are common with the interests of Interhandel, which are common with the interest in recovering the property, which were common to the interest of the cause that I was doing it, so---

Q --which was common to the interest of Grace?

A No, no.

Q How do you draw the line?

625

A I draw the line in this regard, that when I got into a controversy with Peter Grace about the price, I ceased getting any money from Grace, and I went along out of my own pocket in order to do what I thought was proper to help the parties come to some higher level of thinking on how they should act here.

Q When was that, in '56?

A Let me think now. It was after '54, '55. There was a period there in Grace where Grace decided that the funds which they were going to put into the Aniline acquisition, or had as a contingent reserve for that, they would shoot for the investment in these Petro Chemical Companies that were being offered by the Government. So, it wasn't until after the Petro Chemical bidding was over with that I was able to make such, you know, work as I was doing with Sturzenegger come back into focus for the basis of negotiations.

Q "Such work as you were doing for Mr. Sturzenegger" -- What work were you doing for Mr. Sturzenegger?

A What I was doing was exactly what I was asked to do all along, and that was to use my knowledge that was gained over the years, and use my belief in their cause, with everybody that I dealt with over here in the United States in a manner that would prevent another Remington-Rand situation.

Q At this time, your liquid wealth was what, nil?

A Oh, no. No.

626

Q I'm talking about '56, '57.

A Well, you mean liquid in terms of "Cash in bank"?

Q I mean that you could turn into cash and spend.

A I could turn other things into cash, but who wants to do everything along those lines? I would have to look up the records.

Q You borrowed money during all this era from Mr. Sturzenegger, didn't you?

A The records will show that.

MR. WILSON: We offer in evidence, if the Court please, Defendant's Number 8.

MR. O'DONOGHUE: No objection.

THE COURT: It will be received.

\* \* \*

THE CLERK: Defendant's Exhibit No. 9 marked for identification.

(Defendant's Ex. No. 9 marked.)

BY MR. WILSON:

Q Do you remember in the fifties, to be exact July 14, 1955 -- I wouldn't expect you to remember that date -- writing to Mr. Sturzenegger and criticizing the duplicity of Walter Germann and myself?

627

A I don't know.

Q Have a look at Defendant's Exhibit 9 for identification. First, let's establish that it is in your handwriting.

A Yes.

Q Dated July 14, 1955?

A Yes.

Q --addressed to Dr. Sturzenegger.

A Right.

Q And it is Roman Numeral ten pages long, correct, sir?

A Right, right.

Q You asked to see that to see whether I was justified in asking the question that you were accusing Germann and me of duplicity in seeing Governor Dewey.

A Yes, I did that, and I won't ever forget.

Q Sir?

A I won't ever forget that one.

Q Did you, in the same letter, write Mr. Sturzenegger that Mr. Charles Wilson, the same Mr. Charles Wilson who became Trustee in this case, and the Grace Company wanted Sturzenegger to take the helm and run Interhandel at that time?

A Well, can I read the letter.

Q I wish you would.

A Can you tell me where it is so I can save time, please?

628

MR. WILSON: Frank---

MR. STRICKLER: I'm sorry. I cannot, Mr. Schmitz.

THE WITNESS: You cannot, Mr. Strickler? Well,  
I'll try

MR. STRICKLER: If you separate it, I might start  
back and work forward, and you start from the front and work  
back.

THE WITNESS: (Reading document) I found the part  
about Dewey, Governor Dewey.

BY MR. WILSON:

Q Would you like to read it?

A Let's make sure I start at the right point. Well,  
here, paragraph 6:

"A week or so ago, my partner, Mr. Albert Wenzel  
again proposed to John Wilson that we should contact Mr.  
Thomas E. Dewey. He also asked, 'Should Walter Germann  
be consulted first?' John said, 'No, that will not  
be necessary. Go ahead and contact Dewey.'

Paragraph 7:

"Three evenings ago this was done intimately and  
privately during a conference of several hours. Mr. Dewey  
rather than simply say 'No' (which perhaps John Wilson  
thought he would do to a member of business acquaintances  
and not realizing the very close nature of the relationship)



629 "informed us, as part of other things we learned, that Mr. Germann together with Mr. John Wilson had been in to see him, and that he had turned Germann down who wished to retain him for Interhandel. However, his client later upon retaining him, approached John Wilson, and thereby Interhandel, and that he was making efforts to get this matter cleared. (I shall not comment here on details.) He was dismayed, to say the least, and expressed his most earnest desire to have joined forces with my team, had we come to him a little sooner! He remains our friend as much, or more than ever."

Q Who was "he"?

A Governor Dewey.

Q Were you attempting to undermine me when you wrote that kind of letter to Dr. Sturzenegger?

A No, I was doing what Dr. Sturzenegger asked me to do.

Q --which was what?

A To report to him on everything that would help Interhandel, or hurt Interhandel, to judge for himself.

Q This was only one of tens of criticisms that you have made of my conduct over the years, isn't it?

A Possibly, yes.

Q One time you said that I did not know anything about the history of Interhandel as it existed prior to 1945, didn't you?

630

A Prior to 1945?

Q Yes.

A I don't know.

Q Shall we get the letter, or do you remember saying that?

A I'll be glad to answer any question that I can answer.

Q Did you ever entertain the thought that I didn't know the history of Interhandel as it existed prior to 1945?

A Yes, I can tell you why.

Q Go ahead. Tell me why.

A Because only my father, Sturzenegger and my uncle knew the real history of Interhandel prior to those years.

Q You did not know it, did you?

A No, I did not know it.

Q You could not assist the Trustee in this case by imparting to him any knowledge you had of the history of Interhandel before 1945, could you?

A Oh, indeed I could.

Q All right. Tell us what history, as it existed prior to 1945, you informed the Trustee about? You told me yesterday you did not know about the details of Rigidor and Perpetua and Soapadep (?). Did you know about Industrie Bank?

A Sure.

631

Q What did you know about Industrie Bank?

A Well, I know that Industrie Bank was the holding, so-called bank; had the name Industrie Bank holding for the Preferred shares. I know what Sturzenegger told me about Industrie Bank; and my uncle, as managing director of Interhandel, told me about Industrie Bank.

Q Do you suggest to his Honor that I didn't know those facts, too?

A No, not about Industrie Bank.

Q What was it that your father knew about Interhandel prior to 1945 that I did not know about it?

MR. O'DONOGHUE: I object to that question. I don't see how anybody could possibly answer it.

THE COURT: We can see if he can answer it.

THE WITNESS: Well, I could do my best, John, Mr. Wilson, to answer that question. My father was in Switzerland as Grueter's man on this matter as of 1929. The company was formed in 1928. My late uncle formed this company. It was his. The Swiss bankers came to him with the idea of investing these American industrial holdings. One of my uncles was the financial genius who put this whole matter together.

I was raised in this atmosphere as a boy. And I can

632 tell you right now that Sturzenegger knew, Gruetert knew, my father knew -- and this goes back to '28-'29, and I knew these people as a boy, in their homes, and I grew up in the conversations: and everything that had to do with the operation of this company was operated by my uncle, by marriage, Dr. Gadow, who raised me when my father was in the United States, so I knew a good deal about it.

Q I asked you this morning what you knew about the Old Shares-Standard Oil-Farben hydrogenation deal, and you said you didn't know anything about it.

A I never said that.

Q What did you know about it?

A I know that my father directly handled the cancellation of the matters with respect to Old Shares Investment Corporation-Atlantic Bingen.

Q Do you mean to say---

A I know you and I discussed it for many hours over the years in Washington.

Q Did I seem to be intelligent upon the subject?

A You're darned right you were.

Q Was this before 1945?

A Well, the cancellation occurred before -- yes.

Q Did the cancellation take place through your father or uncle, Herman Schmitz, who was Chairman of some section of

633 I. G. Farben? And who put the deal through? Wasn't he the man who did this deal?

A No, the actual cancellation, with the delivery of the cancellation shares was done by my father.

Q Do you know how the deal was put through?

A Which deal?

Q Do you know--- Can you explain to his Honor, when Farben sold the hydrogenation process to Standard Oil of New Jersey? First let me ask you, do you know what Standard Oil of New Jersey paid I. G. Farben for that property?

A No, sir.

Q Do you know how many shares of stock it was?

A No, sir.

Q Do you know it was almost 600,000 shares of Jersey stock?

A Well, I know that---

Q Answer that. Did you know that?

A I know--- I know---

Q No. Answer that: Did you know it was that much stock?

A That is was 600,000, I did not know.

Q Did you know that I. G. Chemie was interposed in the deal as the seller of that hydrogenation process?

634

A Yes, I recall that.

Q Did you know what was the unfavorable by-product of that interposition?

A The tax suit.

Q And why?

A The 9 million bathtub tax suit that we discussed.

Q Where were the Jersey shares put?

A Well, the Jersey shares were--- Let me see.

I remember that Aniline was at one time, if not the biggest, single one of the biggest shareholders of Jersey; and my father informed me that the Atlantic Bingen Old Shares cancellation was, actually involved him as the head of the company at the time, and that my father stated to me, as you did, that there was no substance to the Government's tax case on Atlantic-Bingen and Old Shares Investment Company.

Q That isn't what I'm asking. I'm asking you if you knew where the Jersey shares were put.

A No, sir.

Q Did you and I discuss a number of pieces of history of Interhandel, the history beginning in 1928 and going up to the war years.

A Over the years, we discussed it many hours.

Q And did I not show an intimate familiarity with every detail of those transactions?

635

A I could never find you lacking in any capacity, Mr. Wilson.

Q Then, why did you write to Mr. Sturzenegger that I couldn't give any history prior to '45?

A Because I don't think you knew any of the history of the formation of the I. G. Chemie in 1928 or '29, because they were matters that only two or three men knew.

Q You mean formation, per se?

A The matters with respect to National City Bank.

Q Didn't you and I discuss that?

A No. -- the matters with respect to Edsel Ford and Warburg, and the formation and the reason for the formation and all of these things which were privy to the men who actually did it. These were policy decisions by the men who undertook to do these things.

Q Did you get that from your father?

A Yes.

Q Didn't I get it from people?

A I don't know who you got it from.

Q What did you know about the debenture issue that financed that deal?

A I know plenty about it. The convertible debentures, <sup>sure</sup>

Q Have you and I discussed the debenture issue?

A Sure. I may have told you about it.

Q Are you suggesting to his Honor that you were the

636 informant of me on this transaction, sir?

A I'm suggesting to this Court and your Honor that you and I, over the years, discussed many things, and we had a common purpose, which was to win.

Q Why did you say that I had no knowledge of things before 1945?

A Well, John, it may be that at that point of time, we had not discussed all the things which we later discussed. I don't know.

Q This was a late letter. I'll find it here in a couple of minutes. Why would you want to say that about me?

\* \* \*

637

BY MR. WILSON:

Q Mr. Schmitz, at one time did you recommend to Interhandel that they settle the case for \$40 million to \$60 million?

A Well, during the time of the Grace period, I thought that they should settle it on the basis of \$55 million, and Mr. Peter Grace thought they should take \$40 million to do it. I felt \$55 million, as long as it had convertible Preferred stock that Interhandel would have a tremendous growth potential and it would be very valuable.

I advised Sturzenegger that the \$55 million pre-negotiated transaction which I had been authorized to pre-



negotiate as representative of Grace, would be very good for Interhandel.

Q Do you remember writing Mr. Sturzenegger on the 12th of December 1955 that you wished that Basel had listened to you two years ago and received between \$40 million and \$60 million settlement?

A Yes.

Q Were you with Grace on February 29, 1956?

A I would say so, yes.

Q Do you remember writing Mr. Sturzenegger on or about February 29, 1956 asking for interim financial help and indicating a monthly payment to you of \$1500?

A I don't remember.

THE CLERK: Defendant's Exhibit 10 marked for identification.

(Defendant's Ex. No. 10 marked.)

BY MR. WILSON:

Q I show you Defendant's Exhibit 10 for identification, consisting of 5 pages, and ask you if it is in your handwriting and was it sent to Dr. Sturzenegger on or about February 29, 1956?

A (Examining document) This is a photostat of my handwriting and it is dated February 29, 1956 to Dr. Sturzenegger.

Q Will you look on page 5 and see if you see a reference to interim financial help and \$1500 monthly?

A Yes, it's in there.

Q Was my paraphrase correct, or would you like to read to his Honor the text?

A I will read whatever it says here that I can read:

"Considering the time elements foreseeable, what I might need would.." -- Wait a minute. I can't read that. There is this paragraph here: Maybe this is what you want:

"It is extremely important to me to learn if there is any practical solution whereby I can draw against.."

I can hardly read this word:

"advanced funds toward the purpose mentioned is needed. Should I be drawing against an account, it is unlikely that my out-of-pocket disbursements and living costs.."

I'm trying to read this, Mr. Wilson.

MR. WILSON: Have you got a better copy?

MR. O'DONOGHUE: I can read it if anyone wants me to.

\* \* \*

MR. O'DONOGHUE: (Reading)

"It is extremely important for me to learn if there is any practical solution whereby I can draw against, or be advanced funds towards the purposes mentioned and needed. Should I be drawing against an

account, it is unlikely that my out-of-pocket expenses and living costs will be required at any average rate greater than \$1,500 approximately monthly."

Is that what you want?

MR. WILSON: Yes.

BY MR. WILSON:

Q Does that conform to what you recall?

A Yes. Beg your pardon, yes.

640

Q You were in the employ of Grace at that time?

A I was serving Grace, but you see, I had had a fight with Peter Grace, and I wasn't getting any payments any more. He accused me of trying to raise the price of the company for the benefit of Interhandel.

Q But at the same moment, you were serving Grace?

A I was serving interests of trying to bring people together towards what was--- I had a share. Now, wait a minute. I had an option on 15 percent with Mr. Wenzel on the Grace transaction, so I was a participant with Grace.

Q Did you have any option with Mr. Wilson?

A Beg your pardon.

Q You said "Wilson" at first.

A Wenzel.

Q Did you have any with Mr. Wilson?

A Never had any business with Mr. Wilson.

Q Now, you mentioned the phrase "serving Grace" at the same time you received this money. Do you want to stand by that phrase?

A Grace wanted to acquire this company.

Q No. I'm asking you: Were you serving Grace?

A I think so.

MR. WILSON: Thank you.

I offer in evidence, if the Court please, 9 and 10.

THE COURT: Any objection? Mr. O'Donoghue?

MR. O'DONOGHUE: No. 9 is another letter?

No objection.

THE COURT: Without objection, it will be received in evidence.

\* \* \*

BY MR. WILSON:

Q At the time you were negotiating with Mr. Joe Martino, of the National Lead Company, and his associates in relation to the General Aniline matter, were you still having this relationship with Mr. Sturzenegger of protecting his interests in the Interhandel-General Aniline matter?

A My relationship with Dr. Sturzenegger didn't change basically, no, never.

Q Whenever you were seeking to serve any of these outsiders, you were also seeking to serve Mr. Sturzenegger?

A I was seeking to serve the solution of the confiscation of this company.

Q But you were willing to take something from both sides in the way of money, weren't you?

A Dr. Sturzenegger was a banker and was lending me money against the recovery.

\* \* \*

642

BY MR. WILSON:

Q Mr. Schmitz, in the year 1958 -- to be precise, around the end of September, and maybe prior to that time -- had you acquainted Dr. Sturzenegger with the interest of Mr. Charles E. Wilson in the General Aniline matter?

A Oh, yes, yes. He knew of Mr. Wilson's interest since '56 in the matter of Interhandel's best interests.

Q And you advocated that some kind of trusteeship be set up for Mr. Wilson with Mr. Sturzenegger, didn't you?

A When?

Q September 29, '58. I don't mean to hold you to that date. That's the letter I refer to.

A I haven't seen the letter, please.

Q Do you remember advocating that he was a better man than Tom Dewey for this purpose?

643

A I don't remember it now.

MR. WILSON: Frank, give me that letter, will you.

Mrs. Harris, will you give that exhibit the next number, please?

THE CLERK: Defendant's Exhibit 11 for identification.

(Defendant's Ex. 11 marked.)

BY MR. WILSON:

Q I am showing you this, Mr. Schmitz, only to refresh your recollection as to my question. It is Number 11, in longhand September 29, 1958 from you to Dr. Sturzenegger. Do you find mention of Mr. Wilson and Governor Dewey in there?

\* \* \*

Q What's the reference to Mr. Dewey?

A Shall I read this to the Court?

Q If it will illuminate us on some comparison between Mr. X and Mr. Dewey, go ahead and read it.

A There is no Mr. X mentioned.

Q I understand he may not be mentioned by name. What did you say about Mr. Dewey?

A All right. "Perhaps you'll remember that in 1954 when Mr. Wenzel was my associate and partner with Grace, that he and I proposed to John Wilson that we add Thomas Dewey to our forces. We were advised to wait, and later told by John Wonsen to go ahead. When the intimate meeting with Dewey was held, Dewey said Germann had tried to retain his services, he had refused, but by that time could not be retained by us, although it would have pleased him to, because he had already been retained by

others. Brownell was Attorney General at that time. I have mentioned this only in retrospect. Now, it has been rumored that Tom Dewey might be involved again, or say Tom Dewey can do it. Perhaps Dewey can, although I can see handicaps or problems. Personally, I do not doubt -- In fact, I believe that there" ---

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There must be a word -- it's punched out here; I can't---

"is hardly any single man with more influence with the present Administration, politically, or perhaps a political lawyer.

"Yet, (a) one drawback is Dewey is a politician, that he is a lawyer, and that he is paid to attempt things for gain; (b) another drawback is that he is young enough to be ambitious to be Secretary of State or President, or something else.. He has opponents -- he has opponents -- know he is making money and wants to make as much as possible to enable another term in public life.

"These incentives are drawbacks of a material measurable quantity in the Interhandel-GAF matter. Although he could succeed, he is not a truly objective, unbiased, free agent with no personal financial interests in the outcome."

BY MR. WILSON:

Q Now, read the last paragraph of the letter, please, sir.

A All right. "Yet -- there is such a man of equal stature and in a much more effective position of strength, and he is my friend, and Interhandel" ---  
And this is totally illegible, Mr. Wilson. Can you tell me  
646 how anybody can get what that was?

MR. O'DONOGHUE: I think I can.

MR. WILSON: Look over my shoulder. Shall I finish reading it? "Interhandel's friend and the Government's friend."

THE WITNESS: Yes. "He is my friend and the Government's friend and Interhandel's friend."

BY MR. WILSON:

Q Was that Mr. Charles Wilson?

A Yes, sir.

MR. WILSON: We offer in evidence Number 11 for identification.

MR. O'DONOGHUE: No objection.

THE COURT: Without objection, it will be received in evidence.

\* \* \*



BY MR. WILSON:

Q Now, on May 14, 1959, you were free of any connection with any industrialist outfit, weren't you?

A Definitely.

Q And you were working with Dr. Frey at that time and Dr. Sturzenegger---

A Yes.

Q --to promote the Wilson Trusteeship?

A Yes.

Q And were you then in the true employ of Dr. Sturzenegger?

A I was not in his employ at all.

Q Do you remember him advancing to you, as a friendly gesture, he will raise the limit of your loan account by francs, and then it follows in dollars. I don't know whether it's \$20,000 or 20,000 francs---

MR. O'DONOGHUE: It says francs.

BY MR. WILSON:

Q Which was it?

A Let's say \$5,000.

Q Do you remember that occurring?

A Yes.

Q That was a loan, too, was it?

A Yes, sir.

\* \* \*

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BY MR. WILSON:

Q Mr. Schmitz, when you saw Dr. Schaefer, let's say in October of 1959, or in subsequent meetings with him, did you inform him of this vast Sturzenegger-Frey-Schmitz-Wilson activity that preceded the Schaefer era?

A Oh, yes, I had long discussions over the months with Dr. Schaefer in Zurich. I mean, I made repeated trips there and we spent hours and hours together.

Q I don't think you understood my question.

A My answer is "yes."

Q Did you inform him of what had gone before?

A Oh, yes.

Q And you told him that Mr. Wilson had been conditioned to take on this job?

A Oh, no; now wait a minute. No, sir.

Q I'll bet you didn't! Did you tell him that the subject had been favorably received by Mr. Wilson?

A I would say yes.

Q --that he had gone so far as to think in terms of

649 whom his private lawyer should be, if he took on the job?

A I reported faithfully all the things--- I disclosed anything on any occasion that came up on an agenda of a meeting.

Q I don't believe you understood my question. Did you tell Dr. Schaefer that Mr. Wilson had advanced in his interest in taking on a "trusteeship" to the extent that he had even visualized what lawyer he would choose to guide him?

A I think I told that to Dr. Schaefer at a later meeting on October 26th, because I have a record of having discussed in detail the matter of Mr. Spofford, and I remember handing Dr. Schaefer a copy of some document with respect to Mr. Spofford and his position in the Rockefeller National something.

Q What did you tell Mr. Schaefer at that time about the prior mentioning of Mr. Spofford's name?

A Well, I remember how very pleased Dr.--- I told Dr. Schaefer about Mr. Spofford, and I remember how delighted Dr. Schaefer was, and I gave -- I remember I gave him some biographical material on Mr. Spofford and his connection with NATO and that he was a Solicitor General, or something, a Provost Marshal, a general in World War II, and I remember that I gave to Dr. Schaefer as much information as I then had and knew about Mr. Spofford whom I had not met myself.

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Q I don't believe you have still understood my question. Did you tell Mr. Schaefer that Mr. Spofford's name had been the subject of a discussion with Mr. Wilson at a time when you and Dr. Freye and Dr. Sturzenegger were trying to induce Mr. Wilson to take a trusteeship?

A I can't recall whether I did that or not, at this moment.

Q When did you first inform Mr. Charles Wilson about your 5 percent arrangement?

A I informed him about it when I came back from Zurich, and I talked to him about it right after the trusteeship acceptance, and we talked about it at the time that he insisted that I not come to Washington because of it. And I talked to him while he was Trustee, before I went and I submitted to him the draft to the letter, the letter which I mailed to Dr. Schaefer after the breaches of the trust power, a number of times.

Q Let's fix these times. In other words, when you came when you came back from your initial meeting with Dr. Schaefer in October of '59, you informed Mr. Wilson that you had a 5 percent agreement with Dr. Schaefer, is that right, sir?

A Shortly thereafter, yes.

Q And then, did you inform him of this in Paris because the evidence is that he did not overhear the conversation?

651 A Well, the Paris meeting, the way it was worked out was that I arranged with Dr. Schaefer in Zurich, consistent with the Memoranda of October 26th and during the nine days before Paris, when we drew up the powers, consistent with the October 26th Memorandum, that all equities would have to be paid out of the sale----

Q Mr. Schmitz, this is a very simple question. My question is: Mr. Wilson--- You have testified that when Dr. Schaefer spoke to you in Paris about the 5 percent, nobody was present. My question is: Did you repeat it to Mr. Wilson immediately thereafter?

A No.

Q Did you repeat it to him at all?

A I repeated it to him.

Q Did you repeat it to him in the preciseness with which you testified to its description here yesterday -- 5 percent payable out of the avails of the General Aniline-Interhandel solution---

A Well,---

Q --wait a minute: 5 percent of the avails of the Interhandel-General Aniline solution, to be in compensation for your inducing Mr. Wilson to assume the trusteeship?

A I told Mr. Wilson that I had a 5 percent share out of the avails of the recovery under his trusteeship powers

652 and to be paid out of the trusteeship powers when the property was in his hands.

Q Did you tell him that you would have earned that 5 percent, albeit its payment was postponed, but you would have earned it once Mr. Charles Wilson accepted the trusteeship?

A Oh, yes.

Q Did you tell him that in the presence of anyone else?

A I talked to him about it when he was trustee and I talked to him before he became trustee.

Q I know, but did you talk to him--- On the initial occasion when you mentioned the 5 percent, did you mention it was payable the moment he accepted the trusteeship?

A Yes. I told him that I would get 5 percent for creating this trusteeship because once I created the trusteeship, my work was finished. In other words, that was my commission. That's the job I had to do!

Q There is no doubt about it, that you made it clear to him that that was the service that you were rendering for 5 percent.

A Oh, yes, I'm sure of that.

\* \* \*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ROBERT A. SCHMITZ,

Plaintiff,

-vs-

SOCIETE INTERNATIONALE,

Defendant.

Civil Action No. 85-37

Washington, D.C.

Monday

January 12, 1970

The above-entitled matter came on for further trial at 10:00 a.m., January 12, 1970, before THE HONORABLE JOSEPH C. McGARRAGHY, a Judge of the United States District Court For the District of Columbia.

APPEARANCES:

As heretofore noted.

M. Wehrli

P R O C E E D I N G S

(10:00 a.m.)

MR. O'DONOGHUE: May I make a representation to the Court. As you know Mr. Schmitz is under cross-examination. Dr. Ulrich Wehrli is here from Switzerland and is anxious to testify and go home. Also Mr. Charles Wilson is here and is anxious to testify and go home, too, if possible.

We have agreed that in order to try to accomodate those interests that we would like Dr. Wehrli to go on first this morning.

THE COURT: Is he going on for the plaintiff or for the defendant?

MR. O'DONOGHUE: For the defendant.

\* \* \*

MR. WILSON: If the Court please, Mr. Strickler is going to examine Dr. Wehrli if you will permit.

Thereupon

ULRICH WEHRLI

was called as a witness by and on behalf of the defendant and, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STRICKLER:

Q Will you state your name, please, and spell it for



the reporter?

A Ulrich Wehrli. U-l-r-i-c-h W-e-h-r-l-i.

Q Where do you live, Dr. Wehrli?

A In Zurich.

Q What is your employment now, sir?

A I am a private banker.

Q With what company do you work, sir?

A My company is called Ruegg and Company. A.C.

Q Directing your attention to the period from late fall of 1959, did you work for Union Bank of Switzerland?

A I worked for Union Bank of Switzerland.

Q When did you leave the Union Bank, Dr. Wehrli?

A In late '62.

Q What was your position while you were employed with Union Bank?

A I was in all kinds of positions, starting from the bottom.

Q During this period, from the fall of 1959 until you left in 1962, what position did you occupy?

A Assistant manager.

Q Did there come a time when you became acquainted with Robert A. Schmitz, the plaintiff in this case?

A Yes.

Q Can you tell us approximately when you first met

Mr. Schmitz?

A It must have been in fall '59.

Q Can you tell us where this meeting occurred, sir?

A In my office.

Q How did it come about that you met Mr. Schmitz?

A It was before with Dr. Schaefer, and then introduced to me by Dr. Schaefer.

Q Will you tell us what occurred at that meeting?

A I don't recollect but we might have had a long talk.

Q Do you recall any of the substance of the long talk?

A Referring to General Aniline and Interhandel.

Q Do you recall any more about it -- can you give us

59 any more of the substance of that conversation than you have, sir?

A No.

Q Did there come, or were there other occasions when you met Mr. Schmitz?

A I met him in winter and spring of the following year.

Q Does that mean the winter of 1959?

A No, '60.

Q Will you tell us approximately how many times you met Mr. Schmitz during the period that you were employed by Union Bank?

A I don't know. It may be six or seven times.

Q Could you tell us where the meetings occurred?

A Part of the meetings were in Zurich, part in New York.

Q Did you meet Mr. Schmitz in Zurich in April of 1960?

A Yes.

Q Can you tell us where and what occurred at the meeting?

A He came to Zurich and brought some drafts with him.

Q Drafts of what?

A Drafts for resolutions and powers in connection with the proposed trusteeship of Mr. Charles Wilson.

Q What occurred between you and Mr. Schmitz while he was in Paris at this time in April of 1960.

Q Can you describe your contacts with him, sir?

A In Paris?

Q Yes.

A We were in Paris, all of us, that means Schaefer, myself, of Union Bank, Charles Wilson, Spofford and Robert Schmitz.

Q What transpired so far as you can tell us during those meetings?

A There was, at the beginning there was a general meeting in a separate room and general talks about the purpose of the proposed trusteeship and then Schaefer had to leave, I

think the same day, and I stayed longer, and there was also a separate meeting between Schaefer and Robert Schmitz, and after that meeting I met Robert Schmitz in the hall of the hotel, and he told me that he was talking with Dr. Schaefer about his personal future in this connection. He gave me quite a lengthy story. And so I had the impression that this was more a general talk we had, and told him that if he thinks there is some agreement, he should put that down in writing and send it to me.

Then, later, I had many hours walk with Spofford through Paris, to inform Spofford about the whole Interhandel situation.

61 Q Was this the evening of the same day or afternoon of the same day?

A I think it was the evening of the same day, between four o'clock and seven.

Q Was Mr. Schmitz with you when you were with Spofford during this period of time?

A I don't remember because my attention was directed to Spofford, to keep him informed and briefed.

Q Do you remember whether you saw Mr. Schmitz that evening for a walk along the Seine?

A I don't remember.

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Q After the meeting in Paris, did you again have occasion to see Mr. Schmitz?

